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The American Political Science Review

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THE UTILIZATION OF SOCIAL SCIENTISTS IN THE OVERSEAS BRANCH OF THE OFFICE OF WAR INFORMATION

LEONARD W. DOOB
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Many social scientists employed by the government or in the armed services during the war found their research and scientific wisdom not eagerly accepted, wisely interpreted, or sensibly followed by policy-makers. Unlike some of the old-line departments, the war agencies had no established procedure for utilizing social science. Social scientists had a place on the ever-changing organization charts, sometimes merely because it was somewhat vaguely felt that all kinds of brains, even academic, were necessary to win a total war. Often they had to carve out for themselves the specific rôles they wished to play. They functioned, not in accordance with the charts, but within what Mansfield and Marx[1] call informal organizations of their own making.

In many situations, there was a discrepancy between what social scientists thought they could do and what the policy-makers were prepared to let them do. Some sought deliberately to bridge the gap by promoting and marketing their disciplines and themselves. Like their colleagues in the natural sciences, they wished to be consulted when problems involving their own expertness were involved.

The informal techniques that social scientists employed in behalf of social science and themselves are worth recording because certainly similar ones must often be utilized whenever social scientist meets policy-maker. They should be mentioned to any social

[1] Harvey C. Mansfield and Fritz Morstein Marx, in Fritz Morstein Marx (ed.), *Elements of Public Administration* (New York, 1946), Chap. 13.

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scientist about to enter government service, so that he can at least be aware of the problem and more easily survive the initial period of disillusionment and misery. They belong, it seems, within the purview of the student of public administration.

What follows in this article is a necessarily abbreviated case history of the writer's experience in one war agency. It is deliberately somewhat autobiographical, so that the raw materials may be presented as concretely as possible. Naturally, the social-science demands of the Overseas Branch of the Office of War Information were not typical, nor does this writer—a psychologist—claim to represent anyone except himself. It can only be hoped that other social scientists will record their own similar and dissimilar experiences and produce a more general guide-book for social science in government.

I. TYPES OF RESEARCH

By executive order, the Overseas Branch of the Office of War Information—as distinguished from the better known but smaller Domestic Branch—was the government agency charged during the last war with responsibility for transmitting official American propaganda to enemy countries and for disseminating "information" in the name of the United States to allied and neutral countries outside the Western hemisphere. Within an active theater of operations, this responsibility was shared with military and naval authorities and sometimes taken over by them. Every conceivable vehicle of communication was employed, extending from a short-, medium-, or long-wave radio program to a lecturer on American literature in one of the British Dominions, or from a slick magazine to a greeting from the American people printed on a soap wrapper. Concealed or "black propaganda" (like rumor-spreading) did not concern the OWI, since all of its "white propaganda" and information were clearly labelled as coming from this country.

In the accepted jargon of government, a sharp distinction was drawn and actually existed between policy-makers and operators. A policy-maker contributed to the formulation of a propaganda directive or criticized propaganda output before or after its dissemination. Propaganda directives of the OWI were written in Washington with or without the help of other government agencies, but they became official government policy only after being approved by the Department of State and the War and Navy

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Departments. An operator, on the other hand, "implemented" the directives through one of the communication media. At all times his production was "controlled"—or was supposed to be controlled—by policy-makers or their representatives.

Research in the Overseas Branch was divided into three types: policy, operations, and background. Policy research, which was almost always classified as secret or confidential, consisted of facts and generalizations which helped policy-makers write directives for countries that were, or might eventually be, reached by the OWI's propaganda. The "state of morale" in Germany and Japan, for example, was frequently assayed; obviously, it was said, one kind of propaganda is needed for people with a high morale and a different kind for those whose morale is sinking. Operational research, which was never classified, contained facts or pseudo-facts of interest to operators. If a directive commanded that the people of one country be told that Germany's morale was high or low, a research group uncovered items allegedly demonstrating the Reich's mental state. Background research, which was either restricted or not classified at all, fell somewhere in between, but generally strove to increase the insight of operators.

The research resulted in reports that varied in length from a sentence to a volume. The size of an obscure town or the latest propaganda line employed by Radio Tokyo was determined in response to a face-to-face, telephoned, teletyped, telegraphed, cabled, or radioed request. At the other extreme were weekly reports analyzing significant events inside a country, often with the aid of tables and graphs indicating the frequency with which a given propaganda theme was being employed on the radio, in the press, or by both. Then facts were merely assembled in a form convenient for operators; for example, there was a daily publication listing, under convenient rubrics, quotations from foreign journalists and newscasters which could be incorporated into feature stories or radio scripts. Some intricate research also was carried on, such as an anthropologist's attempt to delineate the character structure of a few countries on the basis either of prisoner-of-war interrogations or of interviews conducted with scattered informants residing in the United States.

The OWI's research cannot easily be classified as belonging to one rather than another social science. In fact, it may be seriously questioned whether much of it had anything at all to do with social

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science, unless social science be defined broadly as simple fact-gathering about people. From a social-science viewpoint, the problem for policy research was real enough, since it was always a variant of one of the following questions: what is happening inside a particular country, what are the people doing and thinking, what are the pleaders plotting and planning? The answers to such questions, however, required adequate data before any social science could be systematically employed. Such data were lacking. Often fairly important reports existed, but, because they were of necessity highly classified and/or came from other agencies and governments with which effective liaison was gradually established, they could be distributed only to a few key researchers. The OWI never developed its own intelligence-gathering facilities overseas, even in countries where the people themselves could have been studied. Other agencies asserted that this was their function, although they seldom discharged it satisfactorily. The outposts' budgets, moreover, were usually so limited that their chiefs felt compelled to dispense with the frill of data-collecting and to concentrate their manpower on useful and more pressing tasks, *viz.*, operations or administration. One top social scientist was able to recruit an excellent staff to do research in one of the liberated countries, but soon after he had completed some first-rate reports a quarrel with the commanding officer of the military group under whom he worked in that theater brought the entire project to an end. In a sense, too, the OWI's inability to secure the information it needed resulted from the scattering, both in Washington and abroad, of research related to propaganda and information and of competent personnel.

By and large, therefore, it can be said that the data at hand secured all the analysis they deserved. Sometimes, in fact, the analysis was too refined and represented a deductive leap into the unknown, motivated by the social scientist's desire to use his social science or by his impulse to compete with journalists on their own terms. Far too many risky and dogmatic inferences concerning the state of morale in enemy countries, for example, were made on the basis of radio transcripts and newspapers simply because these data were at hand by the train-load. What was seldom done was to pool the available data and information of all experts in order to determine systematically—in terms of social-science principles —how people might respond to propaganda. Instead, the easier

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and quicker solution was simply to consult one of the self-styled or recognized experts concerning the desirability of the propaganda innovation. This was a hit-and-miss approach in a situation in which no one except an omniscent deity will ever know in detail what hit and what missed. The social scientist could not protest, inasmuch as his own position was too vulnerable; if he talked in terms of principles or theories, he ran the risk of being called a "professor" and of delaying fast-moving operations.

II. ADMINISTRATIVE ORGANIZATION

Research was permitted within the Overseas Branch because each policy-maker and operator in his own way paid lip-service to "facts" and was convinced that someone ought to collect and perhaps analyze them. Journalists, cooped up in an office or an army establishment, were worried because the conditions of war prevented them from running down the facts; they looked upon research workers as glorified, if not qualified, "leg-men" for a city editor. Men from the fields of advertising and radio had previously grown accustomed to some type of market research to bolster their intuition and they claimed they needed a substitute. There was always the feeling that the OWI, young and lusty though it was, deserved its own research organization equally with its occasional rival,the Office of Strategic Services, or like the big, mature respectable agencies of State, War, and Navy. Some officials, furthermore, were stricken with the desire to build an empire for purposes of ego-gratification or civil-service classification—and a good corps of slaves to do research impressed everyone, except the sleuths from the Bureau of the Budget, as something all good empires should have. The top administrators of the OWI, who feared that a large research appropriation might antagonize those sleuths as well as congressional committees, attempted to curb such expansionist tendencies, frequently with much success.

Almost every kind of organization plan for research was tried. During the existence of the Overseas Branch, there was a research group at each level of the agency, and the various groups had administrative and functional responsibility to all imaginable policy-makers, operators, and administrators. At one time, it is fair to say, only the fiscal office and the janitor did not have to worry directly about the kind of research being conducted or the promotion of a bilingual clerk. A central Bureau of Overseas Intelligence

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in Washington contained approximately one hundred people who concentrated on policy research, and who also wrote background and operational reports. For administratively obscure but politically evident reasons, the principal policy-makers in Washington were permitted to have their own research staffs or did research themselves. The large operating offices in New York and San Francisco had sections called Operations Intelligence and other research groups which supplied implementing materials to operators. Yet here again some of the operators had their own research staffs or trusted no one but themselves to carry on the work. Similarly, the outposts located throughout the world and the combat propaganda teams functioning close to enemy lines collected intelligence which might or might not be sent back to the United States. Some of these groups, though inadequately staffed, prepared their own policy and operational reports.

From the viewpoint of the utilization of research and the elimination of duplication, no one administrative system seemed better than another. All that reorganization accomplished was to place a group in a different position on the organization chart. The decisive factor was not organizational but geographical and human. Duplication of effort, for example, was largely avoided, at least in the United States, through informal agreements and constant contact between people who liked and trusted each other.

III. RESEARCH PERSONNEL

In the Overseas Branch, it was by no means thought that social scientists alone had the ability to make sense out of heterogeneous data; journalists, with their traditional "nose for news," were frequently considered better equipped to piece the facts together. In some instances, less capable journalists and radio men, who did not quite live up to the Branch's standards in their profession, were sentimentally retained but farmed out to research. The conviction existed that a national, almost regardless of what his previous training had been, was *ipso facto* an authority on the nation from which he had come or fled. His expertness might be questioned if he showed bias one way or the other regarding, for example, the issue of communism, but otherwise he tended to be accepted as a one-man panel truly representative of the millions in his homeland with whom he might have had no contact for years. It was amazing to observe that such individuals were sufficiently courageous or foolish to dare foretell in detail precisely how an entire

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nation would respond to a propaganda appeal. Nationals of a foreign country, of course, had to be employed for purely linguistic reasons, but very quickly many of them—too many of them, in this writer's opinion—were permitted to transcend their rôle as translators, announcers, or clerks. In addition, there were a few individuals—approximately five or ten per cent—who would be recognized as social scientists inside or outside any academic community; and they tended to occupy the most prominent and important research positions.

This policy of mixing social scientists, journalists, and nationals was not necessarily deplorable. The snap judgment of the journalist could not be dismissed or ignored by the social scientist who felt himself intellectually paralyzed by the paucity of reliable or unreliable data. In such a situation, he excelled only as a critic. His training tended to make him less subjective, less ethnocentric, less prone to generalize from biased data, and—all in all—less likely to be dogmatic. A critic is seldom popular, and the research race in the OWI tended to be won by the swift and the glib. In a competition between shrewd or wild guesses and scientific hypotheses or theories, the social scientist ordinarily has or should have an ace up his sleeve: verification. Verification during the war was generally out of the question, or at least consisted of ambiguous or out-of-date sense-perceptions. The OWI, in large part through no fault of its own, was definitely not a good testing-ground for social science or social scientists.

IV. RESEARCH MORALE

As in any organization, the research worker's morale fluctuated as a function of personal circumstances and the *esprit* he had established with his immediate associates. Three factors, however, seemed to affect almost everyone. In the first place, an individual was happier if convinced that he had access to "inside" information, which almost always was classified intelligence originating in another government agency (especially the Department of State) or an OWI outpost. Then the completion and circulation of a report brought satisfaction just as the spirits of an academic social scientist rise when an article or book he has written is published, even though the OWI reports never bore the names of their authors. But, most important of all in wartime, was evidence that operations or policy, or both, had been affected by a report.

Only by examining actual output could an individual determine

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whether or not operational material provided by him, or one of his general propaganda suggestions, had been utilized. The enormous production of the OWI, however, never permitted a complete survey. Very frequently, operations expressed gratitude to research and stated that a particular report had been incorporated into a script or story.

The writer of a policy report, on the other hand, could always determine whether or not his contribution had been influential by consulting the weekly directive. Although these directives were classified as confidential, they were made available to most of the research workers, and the principal one—called the Central Directive for the entire organization—was read aloud and discussed at weekly meetings. Many of the directives, moreover, contained not only a list of "do's" and "don'ts," but also a concise background summary of trends and events which gave a partial explanation for the propaganda policy, and which might contain research materials.

Some individuals inside the OWI tortured themselves with another thought, which then affected their morale: was the dissemination of propaganda or information itself an important contribution to the war effort? The doubt might concern the OWI effort regarding a particular country like Albania or Burma; even if a radio program were actually heard, and even if eventually stockpiled materials were distributed after the nation had been liberated, was it worth while to expend the effort? Such soul-searching naturally was not confined to research workers, but often pervaded the Overseas Branch. It was sometimes stimulated by congressional or newspaper attacks upon the OWI. Or it occurred when the individual himself felt guilty because his was an intellectual job and not a task in a combat area—the way to win a war, the phrasing went, is through bombs and not words. The OWI and the individuals themselves, therefore, provided a set of justifications, few of which were rationalizations. If psychological warfare could shorten the war only by a few minutes, it was said, thousands of lives would be saved, and so every propagandist's superego could feel at ease. Evidence concerning the effectiveness of propaganda (such as the number of prisoners carrying surrender leaflets or the enemy's effort to refute an American propaganda line), moreover, was frequently at hand and widely displayed.

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Usually the OWI'er managed to stop thinking before he reached the point of asking the ultimate question; as a research worker, he was happy if he affected policy or operations.

Social scientists, in addition, faced a morale problem of their own. Most of them quickly realized that for the reasons already outlined, they could not function as specialists. Why, then, did they remain in the Overseas Branch if they had little or no opportunity to use their talents? Each man and woman no doubt had his own answer. Some did move into other agencies whose research fields looked greener, or returned to their colleges and universities. Others wanted to move, but were persuaded to continue. Those who remained—and the writer has the impression that many more remained than left—were simply intrigued by the OWI. They were convinced that propaganda was an important weapon and that—however humbly—they were helping to wield it. For the duration, they allowed most of their social-science skills to hibernate, even as men and women in the armed forces were compelled frequently to forget their professions, trades, or personal preferences. A few kept hoping that some day or week or year they would be permitted to collect the data they required. Still others felt the challenge of trying to make as much of social science as possible work under unfavorable circumstances. There was always the thrilling possibility of being sent overseas. *Esprit* inside the organization was sometimes high, and it was considered poor sportmanship to desert one's colleagues. No doubt every academic individual liked his contact with "real life" outside the campus; he could personally witness how one government agency functioned in wartime, and he could work with people from the other side of the intellectual tracks. Anyone interested in propaganda as such was able to meet propagandists and to observe, perhaps, what made them tick and fail to tick. Many social scientists in the OWI had a grandstand seat at the propaganda game because they were expected to carry research water to the players.

V. PROMOTION OF RESEARCH

As chief of the Bureau of Overseas Intelligence, the writer realized that social-science research, especially projects requiring execution overseas, had to be promoted. He knew that the administrators were sympathetic toward bright and sound ideas within

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budgetary limits. He never convinced himself, however, that additional policy research was basically either necessary or feasible.

For one thing, he concluded that research could play only a negligible rôle in the formulation of OWI directives which were so dependent on the country's political policies and so constantly affected by military and naval clamor regarding security. By and large, it must be said, the propaganda implications of political and military policies were seldom considered. What the OWI was usually compelled to do was to justify or propagandize in favor of decisions already made. The policy of unconditional surrender for Germany, which may have stiffened German resistance, was perhaps a wise one in the long run, but here it need only be suggested that no research could be carried out in the OWI to estimate its wisdom in advance, and none could be tolerated to ascertain the desirability of publicizing its existence, since the OWI obviously had to conform to the wishes of the President. Similarly, the appeals to be employed by combat teams in calling upon a particular group of enemy soldiers to surrender required no systematic research; instead, only a few elementary facts about the conditions of those troops were required, and these were obtainable from Combat G–2. Policy-makers were correctly convinced that propaganda had its best opportunity to be effective during a military or political lull; but the directives written at such a time stemmed almost exclusively from common sense and not from research, and, in addition, they were bound by general American policy and security considerations.

The OWI's propaganda principles, consequently, tended to be unsubtle and elementary, with or without research backing. The usual procedure was not to obtain the psychological facts, but to psychologize concerning the situation at hand. It was quite possible to conceive of genuine research on a social-science level which might or should affect policy, such as the state of public opinion in a country as measured by a refined survey; yet such research, as has been pointed out, was not permitted. Some information—like a stray report from an OWI outpost, the State Department, or the OSS—often seemed worse than no information at all because inadequate information could be misleading. But policy-makers found what they frankly called "hot dope"—such as gossip about a dictator's mistress or an estimate of whether a neutral country

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would remain neutral—more intriguing and important than an out-of-date appraisal of basic factors affecting a country or its people. Under these circumstances, the writer eventually abandoned research and during the last year of the war became Policy Coördinator of the Overseas Branch.

While in charge of research in Washington, however, the writer did manage to overcome his paralyzing inhibitions and to promote research. He found himself most successful among policy-makers whose respect, or at least affection, he had won through means not at all related to the research itself or social science in general. Specifically, this meant being liked personally by the policy-maker, humbly pointing out that the research would not be an encroachment upon the individual's own empire of assistants, forcefully indicating that the results could improve the directive and thus redound to his credit, etc. Certain background reports were sent to the OWI outposts, and the ensuing letters of thanks and approval were then employed as proof that research was necessary. In addition, responsible and capable section chiefs within the Bureau were encouraged to cultivate working relations and friendships with the policy-makers of their areas. In this way they acquired an awareness of the policy-makers' problems on a day-by-day basis. Lest they succumb completely to the charms of these masters and undertake impossible or useless tasks, they were not permitted to begin work on an assignment until the Bureau chief or his deputy was convinced that the request sprang from a real need and not from whimsey, a distinction not always easy to make.

In the field of operations, too, deliberate promotion was carried on, first because it was felt that the writer's Bureau could make a contribution and second, because the Bureau's existence could be only partially justified by its reports to policy-makers. At the outset, it was essential to diminish the hostility of operators in New York toward research in Washington. They distrusted members of the Bureau because the latter were not operators; journalists in general, for example, held sociologists and political scientists in rather low repute because they felt that they themselves secured better "facts" and certainly secured them more rapidly. Then there was always some friction between the Washington and the New York offices, the same type of friction which exists between the editorial and news-gathering staffs in most newspapers, except that in this instance it was intensified by geographical separation and

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by a series of internecine struggles for power which, though at an end, left bad feelings in their wake. It was important, therefore, quickly to build up trust and confidence. This was achieved on a purely personal basis. Each week the chief or one of his staff journeyed to the New York office and for a period of forty-eight hours breathed only the atmosphere of operations. Careful observation of the OWI machine was made; key individuals were regularly interviewed so that their research needs could be ascertained or anticipated; and food and drink served as catalysts to build up genuine friendships. A chief of one of the operating bureaus, for example, was determined that his empire would never be invaded by anyone from Washington, especially a research worker—and he held this belief throughout the war, drunk or sober. But many of his subordinates were less neurotic and could easily be convinced that even a Washington bureau could help them in specific ways. After a period of time, this man winked at the service which "Washington" was providing because he must have realized that the reports were improving the quality of his own output and hence were in line with his own ambitions.

The courting of operators in this fashion sometimes led to impossible demands. The word "research" seemed to suggest to some that a miracle could be quickly wrought and that the innermost secrets of any enemy or occupied country ought to be immediately discovered and made available for operations. Or sometimes a round-up report for background purposes was requested which would have terrified a team of scholars with ten years, and not ten days, at their disposal to complete the job. Another type of miracle considered useful by operators involved spot news or intelligence which, if it existed, was too highly classified to be disseminated. In this connection the Bureau performed a most useful service which won the gratitude of operators: it learned how to censor and alter certain classified materials in such a way that they could be employed without jeopardizing security and yet without losing too much of their original punch. Gradually a principle of liaison between research and operations emerged: requests were accepted only when operators understood the capabilities and limitations of the Bureau, and only when they could demonstrate to a responsible representative of the Bureau that the report would be useful and not just "interesting to know."

An intimate relation between operators and research workers

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was mutually beneficial. The operator obtained information he could use (after in some instances the utility had been pointed out to him) and the research worker learned in detail not only what information the operator needed, but also in what form that information should be presented. One of the most effective techniques the writer ever employed, in his immodest opinion, to win the respect of some key journalists was to write a few reports in journalistic style. This seemed to convince them that he did not live in the clouds, that he appreciated their problems, and that consequently he might possibly grasp their research needs in the future.

The fact that a good relation between operators in New York and research workers in Washington depended so much on personal contact rather than on formal duties was indicated by another situation which was similar in almost all respects except that of geography. The Washington offices in general were unable to establish or retain effective liaison with the OWI office in San Francisco. The same problems existed, but they were never adequately solved because frequent trips were out of the question. The telephone, the teletype, and the mail were not adequate substitutes. Both the Bureau of Overseas Intelligence and San Francisco's Operations Intelligence made conscientious efforts to prevent duplication, to have research performed by the group most capable of performing it, etc., but —in comparison with the Washington-New York link—relatively little was accomplished.

VI. MARKETING OF RESEARCH

It is difficult to say in general whether or not research was eagerly accepted by the OWI's policy-makers and operators. So much depended, as has been intimated, on who did the research. Information with the highest prestige originated outside the Overseas Branch, and it produced submission simply because it came from another agency. Hardboiled journalists in the OWI frequently knew perfectly well that a report from State, War, or Navy was essentially worthless, but they could not disregard the logical or illogical conclusions drawn therefrom for fear of offending the agency involved and, as a result, of having the OWI hauled up before the Joint Chiefs or the Secretary of State. Within the Overseas Branch, there was a tendency to give more credence to research carried on within one's own section than to that produced by another group.

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Policy-makers were more than eager to be guided by research findings when a report seemed, or could be employed, to justify one of their own propaganda ideas, and especially when the respectable departments were opposed to the idea. At a crucial meeting, for example, the representative of the War Department might say that he considered the directive proposal "bad propaganda," a phrase which naturally meant absolutely anything or nothing. The OWI official could reply by saying that "the boys in research have some dope which shows that this is what is needed." To which the man in uniform might respond, "Oh, well, if that's the case—this is none of our business, since security does not seem to be involved." In the policy sphere there was no respect as such for the kind of report any research group produced, because everyone knew that the facts were limited and the analyses unavoidably tentative and inconclusive.

Whether or not policy recommendations were made by research workers depended on the policy-maker involved. During an early period of the Overseas Branch, the top policy-maker—in this writer's opinion, a most capable but erratic man—believed that only he had the brilliance to formulate policy. His ears and mind, consequently, were opened to no one he did not personally like. Since he felt justifiably hostile and contemptuous toward a cavalry (*sic*) officer who for reasons pertaining to the OWI's public relations had been appointed intelligence chief, he paid little or no attention to the Bureau. His two successors did not believe that they alone possessed all the propaganda wisdom inside the OWI, and therefore suggestions from the Bureau were acceptable and frequently utilized. As time went on, the chief of the Bureau was invited to attend most of the important policy meetings. There he could determine some of the areas of ignorance among policy-makers and later make an effort to have his Bureau supply a relevant report.

At these meetings, too, he could advance suggestions for the new directive. The suggestions he made might have their origin in research, in some principle of social science which he happened to consider applicable to the problem at hand, or simply in common sense. If he had research to buttress his argument, so much the better. But he successfully affected policy by pitching into the discussion and succeeding or failing on the basis of what he said. Whether or not in this rôle he was functioning as a research worker, a social scientist, or just a more or less intelligent human being, is

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a purely academic question. Research and social science, in short, were the excuse which enabled him to get into the policy discussions in the first place. This point must be clearly understood. Expressed differently, it suggests that in some situations, where social science data are inadequate or where social science itself can provide only principles or a way of approach to a problem, the social scientist must hurl himself into the debate, participate on an equal or unequal footing with men and women who are not social scientists, toss some of his scientific scruples to the winds, and fight for what seems to him to be valid or even good. A strict adherence to the scientific *credo* in such circumstances leaves the social scientist impotent and sterile as far as policy is concerned. He is faced with these alternatives: to keep quiet, stay within the confines of his research, and leave the decision to others; or to speak up, go beyond his research and social science, and thus share in the decision. Certainly, this writer asserts, the judgment of a social scientist ought to be no worse than the judgment of someone outside the fold when the problem concerns other human beings; and maybe it can be better in some instances.

A question of social or scientific ethics, however, arises in this connection: should the social scientist attempt to add prestige to his argument by always representing himself as a social scientist? The reply each individual gives is obviously a function of his own conscience. The solution of the writer was clear-cut if somewhat self-righteous. When he argued from data, he indicated their nature as well as their limitations. When principles seemed to give rise to his point of view, he named the principles, suggested how valid they were generally thought to be by his colleagues, and never stated that the propaganda universe would collapse if these dicta were disobeyed. When he spoke from what seemed to him to be common sense, he unequivocally and appropriately labelled his thoughts. This procedure did not necessarily make him sound verbose or pompous, for a simple phrase could convey the distinction. "According to reports we have . . . ," "psychologists generally believe that . . . ," or "in my personal opinion . . . " managed, it was hoped, to specify the esteem he merited. Naturally there must have been a positive or negative "halo effect" which caused some of his protagonists to forget the tag, but at least the effort was made not to bluff or to pose as an expert when technical expertness was only partially present or completely absent.

There was no way to force an operational report into a story,

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script, motion picture, or some other medium. The operator was the technician whose judgment had to be accepted if not respected. One could argue and argue, but the only convincing challenge was, "If you don't use this, then how are you going to implement the current directive?" The operator even then might use different material, or perhaps claim that the directive could not be implemented with the type of information available. If an operator, for whatever reason, once employed research material which he himself had not collected, and if his product won approval within the office, then of course he was more likely to trust the research group in the future.

One of the frequent complaints of operators in the New York and San Francisco offices was that the policy directives would prescribe a propaganda line for which there was no operational material. Representatives of research were able to help alleviate this difficulty. As each new directive was being discussed, they indicated whether or not the propaganda line was feasible in terms of available material. Often they also suggested that a propaganda theme be adopted for the reason that non-classified material was at hand. If the theme became part of the directive, then the operators were more or less dependent upon research for implementation. In fact, during the last few years of the OWI's existence, a list of reports from the Bureau which had been compiled, or which would be ready by an indicated deadline, was attached to the Central Directive; thus the week's research could be planned in terms of the Directive and the operators could depend on the Bureau for implementing material.

Reports had to be tailored to the readers, their interests, and their peculiarities. In general, brevity was almost always desired. Most policy-makers and operators had neither the time nor the training to examine long reports whose conclusions were indecisive, and whose factual information was surrounded by verbal hedging. A concise summary at the beginning sometimes helped. After some experimentation, it was found that few research workers could write a satisfactory report. The style of social scientists, for example, tended to be wordy and too involved. As a result, a small group of editors in the Bureau of Overseas Intelligence assumed the functions of translating first drafts into simple English and, if necessary, into "journalese"; of studying the research and stylistic requirements of the different groups in the Overseas Branch; and

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of distributing copies of the reports to the most appropriate people. No report could coast along on the prestige of social science, first, because social science had little prestige, and second, because—in the nip-and-tuck of war, empire-building, and the public relations of the OWI—coasting led nowhere.

VII. OUTSIDE OBSTRUCTIONS TO RESEARCH

The difficulties and problems facing the research worker in the Overseas Branch so far have been confined to those originating inside the agency. There were, in addition, some nuisances from the outside whose presence would never have been missed; no, indeed, they would never have been missed! First of all, social scientists from academic institutions sometimes breezed into the offices of policy-makers not familiar with social science for the purpose of making a proposal which they considered sensational and important. They had to be treated politely for the sake of the OWI's budget and reputation. Generally this was a waste of time. In a few instances, the visitors were hired or utilized as consultants and began to collect data. Finally—and usually much too late—they sent in a report and felt that the job was finished. Actually, the job was not finished. The policy-maker would read the first and maybe the second page of their report, say "how interesting," and then pass it to a colleague whose desk was also littered with unread or undigested reports. Eventually the document was filed and only an efficient secretary could locate it, if anyone ever again asked to see it. Generally, nobody did. What these consultants failed to realize was a simple, mundane matter: research could not be superimposed on the working organization from the outside and, if it was, someone inside the agency had to assume the unattractive responsibility of sticking the nose of the relevant officials right into the report. The consultants suffered from the delusion that officials inevitably would beat a path to their mousetraps, when in truth the officials had many other interests in life. One consultant, after he had spent months wiggling himself into the research which he and his financial backer had decided was essential, convinced himself afterwards that he had been called in by the OWI and hence could not be held responsible for his senseless interloping.

There were also a few social scientists not on the payroll of the OWI—and some not on the payroll of any government agency—who acquired enormous prestige for themselves either because they

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knew and were respected by very important officials in Washington, because they previously had published many books, or because they had trained large numbers of students then under civil service. Some top official of the OWI would hear of one of them, perhaps at a cocktail party or perhaps through a friend in another agency. Then he would wonder why research workers in his own agency were not employing the techniques associated with that social scientist. In some instances the techniques or practical modifications thereof were in actual use, in others they were just not applicable. More time was lost before the top official's thinking on the subject could be set reasonably straight.

VIII. PERSONAL ADJUSTMENT

Service in the Overseas Branch as a research worker was trying for the writer in innumerable ways. Most of all, he found it difficult, as the phrase would have it, to be diplomatic. He had been undiplomatic inside another war agency before he arrived at the OWI. There he had followed a custom of telling people—policy-makers or operators—to visit the nether regions when in his opinion this was the advice they truly deserved. He had learned the valuable lesson, as frankness increased his frustrations, that he would be more useful as a social scientist and happier as a human being if he treated almost every individual like a psychiatric patient who had to be understood in the gentlest possible fashion before he could be expected to swallow the pill of research. In the Overseas Branch, this meant being pleasant to what seemed to be millions of people—which, for this writer, was quite a strain. The adoption of a psychiatric approach, it should be parenthetically added, was fruitful in ways related and unrelated to the performance of duty. In trite but very meaningful fashion, it was possible to like some people when they were better understood, and the subsequent perception that the feeling was reciprocated proved gratifying. By and large, moreover, the members of the OWI were very highly motivated, worked exceedingly long hours, were productive to the extent that their talents and the organizational set-up permitted, and represented as decent if heterogeneous a group of individuals as anyone might ever meet. Under such circumstances, the strain of removing egocentrism, the ethnocentrism of social science, and a heavily reinforced system of personal habits in social relations could be tolerated. A similar problem faced the writer when he worked

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exclusively on the policy level. Then he learned that you could lead an operator to a directive, but you could not make him implement it—no matter how strict the system of controls—unless he understood it, approved of it, and/or had trust in the policy-maker.

IX. SUMMARY

1. In the Overseas Branch of the OWI, social science as such possessed relatively little meaningful prestige among journalists, advertising men, public relations counsels, executives, and others ordinarily concerned with mass communication media in American society. In a vague sort of way, such individuals believed that social science in the abstract was probably pursuing worthwhile objectives, but that those objectives had little or no practical importance, and certainly were of no great interest to them in their professional work. The writer is convinced that contact with social scientists during the war did not alter this viewpoint.

2. Social scientists in the OWI did not really display their wares, and they did not do so largely because they could not. They were judged on their merits after an initial prejudice had been overcome. They had to prove that they could be useful, and it did not matter whether that utility was derived from research, from social science, or from common sense.

3. Social scientists who deliberately sought to be useful, therefore, were impelled to adapt themselves to the people and problems confronting them. This required a kind of plasticity which had no relationship whatsoever to social science and the organization chart, but which the individual had to possess or acquire as quickly as possible. He learned to function in a situation teeming with problems in social science, but lacking the data of social science. In this light, the Overseas Branch itself became a major research project, and it was a project whose intricacies could not be intuited by self-appointed consultants from the outside.

4. Research had to be constantly promoted and, when the report was completed, the findings had to be marketed. No research worker ever had the guarantee that his research was really needed, although he had all kinds of verbal expressions to the effect that it was wanted. He could never be sure that what he did would be utilized unless his chief, or he, assumed the responsibility of following through.

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POLITICAL INFLUENCE AND AGRICULTURAL RESEARCH

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Public programs for agriculture challenge social scientists. How do public aids to agriculture affect the economic freedom of farmers? Can losses of economic freedom be balanced by gains in political self-determination through farmers sharing in the adoption and management of public programs for agriculture? Is governmental power conveyed to farm organizations whose leaders (however "broad-gauged" and public-spirited") lack institutional responsibility to the public? Notwithstanding mutual interdependence of various aspects of the "farm problem," is there a tendency toward splintering public policy among separate agencies in different commodity fields and among conservation, educational, regulatory, research, and credit agencies? Can the content of public policy be divorced for research from the process of policy formation and execution? Can federalism survive the vigorous development of regulatory programs administered from Washington? Contrarily, does federalism introduce factors which tend to defeat administrative responsibility in federal agencies? Is it possible for publicly-supported research freely to probe controversial issues raised by public policy?

Such questions are increased in pertinence by current circumstances. Major re-directions of farm programs seem in prospect. The Committee on Agriculture in the House of Representatives is holding the first comprehensive hearings on agricultural policy since 1937. Meanwhile, Congress has authorized an expanded research program for agriculture which in itself may embody a marked shift in policy.

Consider the implications for social science of the Hope-Flannagan Act (P.L. 733, 79th Congress). While including important traditional elements, the measure reflects the judgment that the country was thrown into ill-conceived regulatory programs in the 1930's and the assumption that redoubled research into the entire production and distribution process will discover ways to construct public policy which would be at once less arbitrary and more effective than New Deal measures. The challenge to the natural and social sciences concerned with argriculture is clear and profound.

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For political science, a major question emerges at once as to the formation of research policy.[1] While privately-supported research is included, Congress directs maximum use of federal and state facilities. But research policies of governmental agencies are subject to degrees of political influence. Frequently, controversial issues have been fenced off from scientific inquiry. But the importance of this kind of restriction should not obscure the significance of the splintering effect upon research programs of pressure by commodity groups. Reference is to demands for scientific answers to specific questions.

However important each *ad hoc* piece of research may be in itself, the real question is: do all the projects inspired by specific pressures add up to a systematic scientific attack upon the farm problems which called forth the major programs of the 1930's? If not, can this kind of systematic attack be mustered in disregard of political influence? This paper suggests that representatives of significant political forces need to ask (or to acquiesce in others asking) the important questions.

I. THE HOPE-FLANNAGAN ACT

On the face of it, "action" outran "research" in the 1930's. In 1932–41, federal funds for research in the U. S. Department of Agriculture, federal grants to state and territorial experiment stations, and non-federal moneys—taken together—averaged $35,000,000.[2] Not until 1937 did combined funds for research rise again even to the level of 1932. Yet appropriations for action programs, $142,000,000 in 1933, rose to $626,000,000 in 1937. The disparity continued: if research received $43,000,000 in 1940, action programs had leaped to $1,229,000,000—not counting the Commodity Credit Corporation's capital-and-borrowing authority of $2,750,000,000.[3] The trend has borne heavily upon men like Congressman Hope. By 1946, the research total had increased to $53,000,000—more than half to state and territorial experiment stations, the balance to the USDA. This figure the Hope-Flannagan

[1] Possibilities of political science research under the act are canvassed in a note at the end of this article.

[2] Round numbers, here and following.

[3] For accuracy's sake, the CCC's authorization was raised to this figure in 1941. Appropriation figures for the 1930's are summarized in *Hearings*, Sub-committee on Agriculture, House Committee on Appropriations, fiscal 1942, pp. 112–113. Some research, of course, was provided by appropriations for "action agencies," e.g., for the Coöperative Research and Service Division, Farm Credit Administration.

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Act would more than double by 1951. A total of $61,000,000 of federal appropriations is authorized, and additional state outlays would be required for matching purposes.[4]

This is not to say that Hope's viewpoint, namely, that research in agricultural problems can be effectively mobilized to eliminate or greatly reduce the need for crude production control and regulation devices, is the only feature of the Hope-Flannagan Act. The problem of cotton, illuminated by the Pace Committee, figured importantly in passage of the legislation. Consideration for other commodities was no less notable.

The search for new agricultural products and new uses for these products, always popular, was expressed in Congressman Andresen's bill, which, in principle, was incorporated in the act. Some state commissioners of agriculture desired federal aid for their regulatory and service functions. There was pressure to force the creation of a separate marketing research function in the USDA. There was a desire to institutionalize the influence of the important agricultural pressures within the USDA so that "practical men" could give direction to departmental research policy. Bi-partisanly sponsored, the bill was widely supported in Congress and by farm organizations, the USDA, the land-grant colleges, and others. Therefore, the emphasis in this paper on the position represented by Congressman Hope should be taken as signifying, in the writer's judgment, the most significant new departure embodied in the act.[5]

[4] Several specific authorizations are earmarked for state experiment stations and require 50–50 matching by the states; other authorizations may, in the discretion of the Secretary of Agriculture, be assigned to the states—if so, they must be matched. If full appropriations are made, $14,400,000 will be earmarked for the states by 1951, and an additional $20,000,000 (under Title II) will be available, much of which may go to the states. How much additional money would be required for matching purposes is difficult to say. In 1945, federal funds to state and territorial experiment stations totaled seven millions; non-federal funds, 21 millions. The national 3 to 1 ratio reflects considerable disparities in the states. For every federal dollar, California provided approximately $10; Indiana, $7; Wisconsin, $5; New York, $8; etc. But Arizona and Georgia provided only $1.50; South Dakota and West Virginia, about $1.25; Idaho, less than $1.00; and Maine, Nevada, and New Hampshire, about 40 cents. Hence considerable additional state appropriations (or other contributions) would be required. See *Hearings*, Agricultural Subcommittee, House Committee on Appropriations, fiscal 1947, pp. 436–437. See also *Hearings*, Committee on Agriculture, H. of R., 79th Cong., 2d Sess., Serial M, "Agricultural Research," pp. 22–24. The latter will be cited as *Hearings*, Agric. Research, 1946.

[5] The background and scope of the act are reviewed in *Hearings*, Sub-committee on Agriculture, House Committee on Appropriations, fiscal 1948, Part I, pp. 210 ff.

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(A) TITLE I OF THE HOPE-FLANNAGAN ACT

The act can best be discussed in combination with interpretation of the possible politics of its administration. Title I provides for research in agriculture in its broadest aspects—production, marketing, distribution, nutrition, consumption, farm organization, and rural living. One sum authorized—$20,000,000 by 1951—allows three per cent for administration. Twenty per cent, $4,000,000, is to be evenly divided among the states, territories, and Puerto Rico, contingent upon equal matching by the same. Fifty-two per cent ($10,400,000) is similarly divided, but half of it on the factor of rural population and half on the factor of farm population; again, equal matching is required. Up to twenty-five per cent ($5,000,000) is provided for coöperative or regional research among two or more state experiment stations, as recommended by a committee of nine *elected by*, and *representative of*, state station directors.

To determine what forces will effectively influence expenditure of these funds is difficult, taking the act as a whole. True, Congress directs that coöperative or regional research projects shall be subject to approval by the Secretary of Agriculture, and further directs that, of all sums above described, twenty per cent shall go for marketing research, subject to USDA approval. Even so, were it not for new elements mentioned later, history would indicate that the USDA would have little influence upon research policy financed by this authorization. Such earmarked allocations to the states are federally reviewed only with regard to legality of expenditure. As to the $5,000,000 for regional research, the committee of nine experiment station directors (which, judging from Land Grant College Association committees, will tend to have the same personnel year after year) will probably be determinative.

Hence the search for political influence must proceed within the states. Variations abound, depending upon such factors as the organization of the college of agriculture and of the experiment station; traditional concepts of the scope, method, and purpose of research; and the pattern and effectiveness of commodity pressures. The matching requirement brings state legislatures into prominence.

In short, research policy is made in a political context. Research on controversial issues, respecting margarine, sugar beets, comparative costs of production, comparative nutritional values of

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foods, the feasibility of irrigation, tenurial systems, and the distribution of farm incomes and governmental payments, may involve political dangers. In addition, as already noted, pressure by organized commodity groups for specific projects to answer specific questions can raise serious questions.

Title I authorizes an additional $15,000,000 to increase the utilization of agricultural commodities and products thereof. While Congress directs the fullest practicable utilization of research facilities of the USDA, the Secretary may make contracts for research with public or private agencies. Now come the new elements indicated above; a strong Secretary might use his discretion regarding the $15,000,000 to influence the employment of other moneys authorized by the title over which traditionally he would have little practical control. The same argument applies, if with somewhat less force, to the one remaining authorization in Title I. This is a sum of $6,000,000 (by 1951) for coöperative research other than that on utilization already described—coöperation between the USDA and the state experiment stations, as well as between these and other agencies, to which the USDA and the stations concerned agree.

To summarize, while much Title I money is earmarked for the states under circumstances that experience counsels will involve little USDA direction, other large sums are authorized in such manner as to suggest the possibility of negotiated research policy between the USDA and the experiment stations. If negotiation develops, it may give rise to a significant new element in the operation of federalism in agriculture.[6]

(B) TITLE II OF THE HOPE-FLANNAGAN ACT

This constitutes the bill introduced by Congressman Hope. It opens: "The Congress hereby declares that a sound, efficient, and privately operated system for distributing and marketing agricultural products is essential to a prosperous agriculture and is indispensable to the maintenance of full employment and to the welfare, prosperity, and health of the Nation."

Research in marketing is to be increased to match research in production; but more than research is involved in the Congressional intent to provide for "coöperation among Federal and State agen-

[6] But see the discussion of Title III below with respect to the committee of eleven.

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cies, producers, industry organizations, and others in the development and effectuation of research and marketing programs to improve the distribution process;" and "an integrated administration of all laws enacted by Congress to aid the distribution of agricultural products . . . "

By 1951, authorizations total $20,000,000. By Congressional preference, research is to employ federal or state facilities (the experiment stations); educational and demonstrational work in cooperation with the states is to employ state agricultural extension services; and coöperative information, inspection, and regulatory work is to be performed by the USDA and state departments of agriculture. States must equally match funds allocated to them; such allotments are covered by coöperative agreements which shall include provisions to prevent duplication or overlapping of work.

But if the Secretary of Agriculture determines that research and service functions may be performed more cheaply, rapidly, or efficiently elsewhere, he is broadly authorized to coöperate with other agencies, governmental or private, including, for example, distributors and processors. Such coöperation is to be contractual, on the basis of regulations promulgated by the Secretary.

(c) TITLE III OF THE HOPE-FLANNAGAN ACT

Clearly, the act, *thus far considered*, purports to equip the Secretary of Agriculture with important new tools of negotiation to influence the formation of coöperative research policy. But the measure now proceeds to institutionalize influence. The Secretary is directed to establish an eleven-man committee to make recommendations regarding research and service under the act, and to assist in obtaining the coöperation of producers, farm organizations, industry groups, and federal and state agencies. Six must be representatives of producers or their organizations.[7]

[7] The Secretary has named E. A. Meyer as his representative and to be chairman of the committee. Other members are: H. E. Babcock, chairman, Cornell University board of trustees; Fred Bailey, National Grange legislative counsel; Robert R. Coker, vice-president, Coker's Pedigreed Seed Company (South Carolina); John H. Davis, executive secretary, National Council of Farmer Coöperatives; Charles F. Kettering, general manager, General Motors research laboratory division; C. W. Kitchen, executive vice-president, United Fresh Fruit and Vegetable Association; Albert K. Mitchell, co-owner of the Bell ranch, New Mexico; President James G. Patton, National Farmers Union; President Walter L. Randolph, Alabama Farm Bureau; Dean H. J. Reed, Purdue University School of Agriculture; and W. Kerr Scott, North Carolina commissioner of agriculture. The committee

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The committee of eleven will almost certainly exert considerable influence. First, the personnel is vigorous and powerful. H. E. Babcock is often named as the strongest man in New York agricultural circles. Walter Randolph has been dubbed "the crown prince" of the American Farm Bureau Federation (*Fortune*, June, 1944, "The Farm Bureau.") Others are no less prominent. Second, if the committee is designated as voluntary, statements in the *Hearings* by Albert Goss, Grand Master of the National Grange, and Congressman Flannagan indicated a much broader rôle.[8] Third, the committee manifests a persistent movement in agricultural circles to take various programs "out of politics" by shifting effective control from the Secretary of Agriculture to some "representative group of responsible leaders." In a sense, there is some movement toward Congressional control. Farm leaders, aware that the President's constituency becomes progressively urban-dominated, consider the Secretary of Agriculture the "President's man."[9]

II. THE PROBLEM OF POLICY FORMATION

The implication of the foregoing is clear. Publicly supported research is prosecuted in institutions whose policies are subject to pressures.[10] If, then, a radical new direction is to be given to a greatly expanded research program, we had better look to our processes of research policy formation.

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met in December, 1946, and February and April, 1947; although Mr. Babcock has been ill, members, with the exception of Mr. Kettering, are actively participating. The advisory committee stands at the apex of a hierarchy of committees. At the bottom are twenty commodity committees; over these are general commodity committees (livestock, fruits and vegetables, etc.), and four functional committees (transportation, storage, shipping, and foreign trade); next below the committee of eleven is a committee on utilization, composed of chairmen of the general commodity committees, of the functional committees, and representatives of nutritionists and "the public."

[8] *Hearings*, Agricultural Research, 1946, pp. 84, 172.

[9] Suspicion of the Secretary's position underlay the struggle over the proposed reorganization of the Production and Marketing Administration of the USDA in the autumn of 1946; it is reflected also in the Flannagan Farm Credit and the Bankhead-Flannagan Fertilizer bills in the 79th Congress. See also the Report of the Coöperative Milk Producers Federation for 1945, p. 15.

[10] For further discussion respecting influence upon USDA research, see the writer's "The Bureau of Agricultural Economics Under Fire; A Study in Valuation Conflicts," *Jour. of Farm Economics*, Aug., 1946. The discussion is carried further in a sequel which considers the problem of "Programmatic Research and Agricultural Policy," *ibid.*, May, 1947. For additional documentation of specific pressures, especially by commodity organizations, on state experiment stations, see *Hearings*, Agricultural Research, 1946, pp. 37–70, 224 ff.

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Take marketing research, wherein advocates of the Hope-Flannagan Act have such high expectations as to call forth the warning from Director Noble Clark of the Wisconsin Experiment Station that "research is not a panacea . . . "[11] Congressmen and witnesses alike seemed generally agreed that marketing research had been undeveloped. Albert Goss echoed the general sentiment, saying that "marketing has been kicked around for 15 years . . . "[12] But, even considering the disparity between action and research already noted, is this wholly true? In reviewing the history of marketing research and service in the federal field, C. W. Kitchen said that during 1923–38 there was "quite a period of growth and stability."[13] No one rose to ask whether more was involved than lack of research resources, whether failure effectively to mobilize available resources was not a factor, and whether the processes of policy formation in our research institutions did not contribute to this failure. It is regrettable that Congressmen did not choose to probe these questions rather than to dilate upon the prevention of "duplication and overlapping."

Let us assume that much more research on marketing has been conducted than the framers of the Hope-Flannagan Act were ready to admit. Why have results been inadequate? Why have the consequences of inquiry upon the organization and conduct of the producing, processing, and distributing process been less than profound? The problem has many aspects. (1) Methodology may not have been adequate. (2) Personnel may have been improperly trained. (3) Research may have been kept from concentrating upon significant problem areas because of their controversial nature. (4) The direction of research may have been too much in the hands of men with traditional outlooks, whose natural science training has made them unimaginative regarding problems of social science. (5) Pressures upon research agencies for immediate answers, concrete results of which would be readily demonstrable, to specific problems of influential groups may have inhibited the development of com-

[11] *Hearings, op. cit.*, p. 41. He added later, however: "Research in agriculture can do even more to help the farmers in the years ahead."

[12] *Ibid.*, p. 83. In the context it is clear that the reference is to marketing research.

[13] *Ibid.*, p. 143, and compare the letter of Dean H. J. Reed of Purdue, answering the contention of a state commissioner of agriculture that "the state experiment stations haven't done research in marketing and they won't." Dean Reed explained the scope of marketing research in Indiana and appended a list of 27 experiment station bulletins, one station circular, and five extension bulletins on the subject. *Ibid.*, pp. 225–226.

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prehensive scientific research upon the economic and social problems of agriculture.

Others might supplement or change this list; but it suggests that no one line of approach will furnish a specific for the problem. Moreover, because of their mutual inter-effects, it is difficult to abstract any of these items for separate consideration. But our discussion will keep largely to the political context in which, as has been shown, research policy is made.[14]

Is our analyzing and organizing ability sufficient to get the "right questions" asked out of this complex political process of research policy formation? Karl Mannheim,[15] it will be recalled, dealt with the problem of bias by arguing that, in the process of knowing reality, individuals in their subjectively conceived interests are both bound and free. The interest-bound bias prevents (for most men, at least) an acquisition of the total view; prevents their seeing things as wholes. Contrarily, the pricks of interest often afford men insights the like of which are denied their less-stimulated neighbors. The analysis helps us understand the conflicts over research policy revealed in the passage of the Hope-Flannagan bill. Moreover, the analysis provides an approach to the problem of mobilizing agricultural research: can we identify the significant interest positions and suggest a means for uniting them in the process of research policy formation? Can this approach (a) enable the special insights to supplement each other and (b) provide a process out of which grows a respect for, based on an understanding of, the positions of other interests?

III. CONFLICTS OF INTEREST

How does Mannheim's theory offer insight into research policy formation? Conflicts of viewpoints in the hearings on the Hope-Flannagan bill show powerful protagonists in agreement on some points, in opposition on others. Some of the opposition seems understandable in terms of different philosophies—divergent conceptions of social reality create different conceptions as to what social policy should be. In both illustrations below, Congressman

[14] Methodological problems in marketing research are discussed in William H. Nicholls' article in the forthcoming volume edited by T. W. Schultz, *New Research Vistas on Agriculture and Rural Life*. Schultz and Lawrence Witt discuss *Training and Recruitment of Personnel in the Rural Social Studies*, (American Council on Education, Washington, D. C., 1941).

[15] *Ideology and Utopia*, translated by Louis Wirth and Edward Shils.

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Clifford Hope (R. Kansas), chairman of the House Committee on Agriculture, is the leading protagonist of the idea that government control and regulatory programs should, and can, be removed or strikingly modified.

The first illustration has to do with Section 32 funds, provided by an amendment to the Agricultural Adjustment legislation in 1935, which directed that thirty per cent of the tariff revenue be continuously appropriated for the removal of burdensome agricultural surpluses. Mr. Hope wished to employ part of these funds to support research.[16]

Now the divergent point of view. Here the American Farm Bureau Federation is the significant protagonist. In 1945, the AFBF had published a list of fifteen basic laws which help assure farmers against the ravages of future depression-created surpluses, and Section 32 is one of these.[17] The AFBF is not afraid of governmental action programs. President O'Neal's statement on the Hope-Flannagan bill cited the purposes of Section 32, declared that marketing activities involved in these purposes "are of the action type nature and not of the type intended to be covered by Title II of the committee print." The AFBF strongly supported the Hope-Flannagan bill, including Title II; it only wished this part of the act to authorize its own appropriations, leaving Section 32 funds as part of the other "action approach" of government.[18]

The other illustration arises out of controversy over the establishment of a separate administration for agricultural research in the USDA. The act states on this point:

"In order to facilitate administration and to increase the effectiveness of the marketing research, service, and regulatory work of the Department of Agriculture to the fullest extent practicable, the Secretary of Agriculture is authorized, notwithstanding any other provisions of law, to transfer, group, coördinate, and consolidate the functions, powers, duties, and authorities of each and every agency, division, bureau . . . or other administrative unit in the Department . . . primarily concerned with research, service, or regulatory activities in connection with the marketing, transportation, storage, processing, distribution of, or service or regula-

[16] In this, he was strongly supported by C. W. Kitchen, now a member of the committee of eleven. Kitchen was moved by the importance of stability in funds for research; but his ideas as to the proper rôle of government are closely in accord with Mr. Hope's. See *Hearings*, Agricultural Research, 1946, pp. 142, 150, 158.

[17] *The Nation's Agriculture*, Oct., 1945.

[18] See the AFBF statement, *Hearings*, Agricultural Research, 1946, p. 209.

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tory activities in connection with, the utilization of, agricultural products, into a single agency."

Hope's original draft required the Secretary to set up a separate marketing research administration. From the standpoint of good administrative practice, cogent arguments were advanced against *requiring* the Secretary so to act.[19]

But behind these issues was another which is more germane to the present discussion as it suggests the relationship between (a) points of view, (b) institutional arrangements, and (c) the nature of agricultural policy. The issue here was brought out sharply by the colloquy between Congressman Hope and Under-Secretary Dodd.[20] Mr. Dodd is a farmer-administrator who has become a career civil servant. In ten years of administrative experience, much of it in extremely responsible positions, he has demonstrated his ability to administer action programs. He enjoys the confidence of many people in the farm organizations; and his standing is very high with the personnel of the Field Service Branch of the Production and Marketing Administration—the old A.A.A. organization which was the avenue of opportunity for Dodd.[21]

Mr. Dodd believes strongly in the reorganization of the USDA (August, 1945) which combined all regulatory and service work, all subsidizing, price-supporting, purchase, storage, and disposal pro-

[19] Congressman Zimmerman asked: "Do you think, or do you not think, that if we put that responsibility on the Secretary [i.e., the responsibility for seeing that marketing research is properly integrated and effectively prosecuted], Congress and the public would have a better chance to put their complaints in against the Secretary and say, 'You have not done this?' But if you set up this department, he can say, 'You have set up this department. I am not responsible for what has been done. You have done it yourselves.' He would be more or less tied." *Hearings*, Agricultural Research, 1946, pp. 203, 205. See also Under-Secretary Dodd's remark: "Actually, when Congress sets up a special administration, the people that you put over in that administration feel that they are set up separate and apart from the rest of us folks, and it is hard to get the proper supervision and use of them. I feel that it would be much better if you told the Secretary to get the job done and allow him the leeway to set up an administration." *Ibid.*, p. 206.

[20] See Dodd's testimony, pp. 183–206 of *Hearings*, Agricultural Research, 1946.

[21] In the controversy over the reorganization of the PMA in the fall of 1946, most of the state chairmen of the Field Service Branch joined in a vigorous protest. They urged, among other things, that Robert H. Shields's resignation as PMA administrator be accepted and that Mr. Dodd be appointed as acting-administrator, "until the confusion caused by the PMA reorganization can be straightened out, and a permanent PMA administrator with a similarly well-established record of public service to agriculture can be selected." See *National Union Farmer*, Nov. 1, 1946, p. 3.

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grams in the Production and Marketing Administration, then divided into commodity and service branches. If this organization were retained, Dodd was ready to acknowledge, indeed to advocate, the need for independence of research—providing that such independence were not achieved through Congressional creation of a separate agency. Apparently Mr. Hope acquiesced in this conclusion, after the issues were finally clarified; at least, Dodd's arguments were well-received by Congressmen Phillips, Rizley, and others. Where, then, is the difference in point of view?[22]

The difference was stated several times by Mr. Hope in the process of clarifying the issues. He insisted not merely that there should be more marketing research, but that marketing research *should be pursued consciously as a means of reducing and eliminating governmental controls*. He was afraid of consigning research to the administrative direction of men who have been operating control programs so long as (in his judgment) to become control-minded. He reiterated this fear even after Dodd declared: "I for one would like to see some way by which the Government could be out of business 100 per cent tomorrow."

At this point, Mr. Hope might well have said: "Yes, you conscientiously would like to see the cessation of control programs, but you do not really believe it is possible; that is not your point of view; I want someone to direct marketing research who really believes that governmental controls can be eliminated."[23]

[22] USDA organization for marketing and marketing research, however, remains controversial. Congressional dissatisfaction in this respect apparently influenced curtailment of research funds for 1948.

[23] Anyone reading the testimony will agree that these remarks really convey Mr. Hope's attitude, even if, unfortunately, he did not make them and, therefore, the writer must make them for him! See *Hearings*, Agricultural Research, 1946, pp. 196–201, and 92 *Cong. Record* 9157, July 15, 1946 (Daily ed.).

There is a correspondence in the points of view of Mr. Dodd with respect to the creation of a separate agency for research and that of the Farm Bureau regarding Section 32 funds. Mr. Dodd was not questioned regarding Section 32 funds. The Farm Bureau, in Mr. O'Neal's statement, explicitly stated that it had no policy regarding the Congressional requirement of a separate research administration. This obvious difference can perhaps be explained as one of differing interests in certain institutional or administrative arrangements. Dodd clearly wanted to protect the Production and Marketing Administration. In the same manner, but in another connection, President Walter Randolph of the Alabama Farm Bureau strongly urged that Congress place provisions in the act that would prevent the establishment of new *federal* offices, either regional or within the states, for the prosecution of research. In this, Randolph was joined by some land grant college officials. The concern over the retention of administrative and institutional arrange-

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IV. AGREEMENT AND SUPPLEMENTATION IN POINTS OF VIEW

The divergencies noted should not obscure important agreements on basic issues relevant to national agricultural policy. Mr. Hope and the leaders of the American Farm Bureau Federation will serve to illustrate this point. (1) They agree that the marketing system should be kept in private hands ("private" including, of course, coöperatives and probably not excluding municipal ownership of terminal marketing facilities.) (2) They agree in estimating the disadvantages under which agriculture has labored and in favoring governmental assistance to improve farmers' positions. (3) They further agree in the breadth of their concept as to the dependence of agricultural prosperity on general prosperity, and vice versa.[24] (4) Finally, they agree to accept the process of policy formation as it has developed in this country. This seems fundamental, if one grants that continued support of democratic processes by influential organizations and representative men is essential for the retention of free government.

Yet an important degree of difference as to the rôle and scope of government does exist. Hope has shown that he will accept the kind of "action" programs that the democratic process produces, stimulated by the demands of such organizations as the AFBF. It may be strongly argued that the existence of groups powerful enough to force government to take positive action provides an essential means for adapting public policy to popular demands—an essential means, that is, if constitutional government, as a method of organ-

ments favorable to the Farm Bureau and the colleges is comparable with Dodd's concern to protect the Production and Marketing Administration.

Yet within, or in connection with, or behind, these issues there was the other issue here under discussion—the issue arising out of different points of view. It is notable that Mr. Hope's difference with the Farm Bureau over Section 32 funds was fundamentally based upon the same reason that made him argue with Dodd as to the organization of research. On both occasions, Hope was struggling against the same point of view—one which accepts the efficiency and inevitability of controls.

[24] On this, see the interesting statement signed by representatives of the AFBF, the National Grange, and the National Council of Farmers Coöperatives at Buffalo, N. Y., Oct., 1946, AFBF, *Official News Letter*, Oct. 16, 1946. Cf. Summary of AFBF Resolutions outlining its 1947 legislative program, *Hearings*, Committee on Agriculture, H. of R., 80th Cong., 1st Sess., Feb. 7, 1947, pp. 38 ff., esp. p. 41, "Price Level Stability." We may cite Mr. Hope's work on the Colmer Committee (Post War Economic Policy and Planning); see its 10th Report, *House Report* No. 2728, 79th Cong., 2d Sess., "Postwar Agricultural Policy." See also Hope's praise of the report of the committee of the Land Grant College Association, "Post War Agricultural Policy" (1944), *Hearings*, Agricultural Research, 1946, p. 47.

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izing compromise, is to be preserved. But it is doubtful whether the protagonists of vigorous governmental action do appraise—or, following Mannheim's analysis, *can* appraise—the consequences of action programs. At this point men become important who, like Hope, will participate in the policy formation process and persist in attempting to re-direct it. In doing so, Mr. Hope will ask searching questions as to the consequences of governmental policy—*questions which simply do not arise out of concepts shared by many AFBF leaders.*[25]

V. AN APPROACH TO THE ORGANIZATION OF RESEARCH UNDER THE HOPE-FLANNAGAN ACT

With this analysis, we can turn to the process of policy formation in research. Take the dairy industry. In a notable statement, Director Noble Clark of the Wisconsin Experiment Station emphasized that research in this area must rise to the magnitude of its task. He indicated the inadequacy of any single state to deal with the problem. "It is a question that calls for a coöperative and coördinated approach so that we take into account the needs and the problems and the opportunities of the dairy industry of the entire nation and of agriculture as a whole."[26]

What groups, associations, or organizations are involved? Given the policy declared by Congress, the following are concerned: natural and social scientists, chiefly in the USDA and in experiment stations of land-grant colleges; research administrators, in the same institutions; administrators of inspection and regulatory programs, most importantly in the dairy branch of the Production and Marketing Administration in the USDA and in the offices of federal milk market administrators; and representatives of interest groups.[27]

A committee might be formed of natural and social scientists, drawn from the land grant colleges, ranging from New England and the northeast through the north central states, and from the

[25] See Mr. Hope's trenchant criticisms of the Agricultural Adjustment program for tobacco, in the writer's article, *Journal of Farm Economics*, Nov., 1946.

[26] *Hearings*, Agricultural Research, 1946, p. 43, as revised by Director Clark in a letter to the writer, Feb. 11, 1947.

[27] Including processors, distributors, and labor unions. Although these last are less influential in the formation of research policy for agriculture, it will be remembered that the Hope-Flannagan Act includes the integration of administrative programs.

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USDA. If this is not sufficient geographical scope, the committee would need to be widened. The committee's task would be to evolve general concepts of what ends, within Hope-Flannagan limits, can be approached; it should then be possible to identify some of the strategic points at which research might be directed to achieve these ends. Here is an area subject to considerable control, federal and state—directly, through agreements and orders under the Agricultural Marketing Agreements Act of 1937, through orders under state milk control laws, and through the administration of sanitation requirements; indirectly, through the Agricultural Adjustment and credit programs of the federal government. The dairy industry has been regulated in a way that Congress says it wants scrutinized; therefore, the area seems appropriate for scientists, acting like scientists, to explore.

But the scientists concerned do not make research policy. Experiment station directors (or their representatives) and policy-making officials in research bureaus of the USDA should, it seems, be in a position to review the findings and recommendations of the technical committee, in the light of facilities and other responsibilities of the research agencies they represent. These men have the responsibility for administrative decision as to the satisfactory delineation of projects, the relationship of proposed research to the scope of the act, distribution of scarce research funds among proposed projects, arrangements for coöperative research, and the like. Some of the administrative decisions have political aspects; for example, the allotment of research resources to dairying and away from some other important agricultural area; or, within dairying, with respect to the scope and direction of the inquiry. But the position of individual state experiment station directors in making controversial decisions might be strengthened through the evolution of a general research program for the dairy industry. It might also be strengthened through the influence of the committee of nine experiment station directors who, under Section I of the act, have to approve interstate coöperative projects. Finally, it might be strengthened by vigorous support on part of the committee of eleven under Section III.

The committee of eleven, as noted, includes representatives of farm organizations. At all events, considering the manner in which influence operates upon research policy in our political society, interested farm organizations should, it appears, also address themselves to the dairy problem. Finally, there are the administrators.

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Anyone familiar with recent evolution in dairy market regulation will recognize the strategic importance of federal milk market administrators. Lacking time for research themselves, they are in a position to advise upon research orientation.

The chief feature of this suggestion is that each of the "parties" has something to offer and each needs to be (and frequently will demand to be) considered. This means that the scientists should be given an opportunity to explore the problem *as scientists;* the administrators *as administrators;* and so on. Liaison would be required and, eventually, coördination and final decision as to a general program and specific projects.

The difficulties are impressive. Delineation of the area would be one; agreement on what scientists would be acceptable to serve as representative of various relevant disciplines would be another. Coördination of various working committees would pose serious problems. Among scientists, it is presumed that not even the lawyers could bridge the gap among the disciplines, especially as between social and natural scientists.[28] It might be impossible to marshal a committee of the "interests," because of the size and complexity of the industry and of internal differences.[29] Liaison between technical, research administrative, interest-group, and action administrative committees would be hard to achieve.

[28] "In the process of tapping the experts for their specialized knowledge and skills, the technical equipment of one profession provides the offset for the gaps in the capacities of the others. And for those many things which in a world not clearly designed for full comprehension by man are beyond human knowledge, the lawyer always stands ready to provide precise formulae acceptable to the Supreme Court as unambiguous expressions of legislative intent." Jacob Viner, "The Short View and the Long in Economic Policy," Presidential address, American Economic Association, *American Economic Review*, Mar., 1940, Part 1, p. 6.

[29] In 1945, the National Coöperative Milk Producers Federation had seventy-four voting member units and several hundred sub-member units. The power of some of the constituent units, such as the Land O'Lakes Creameries, the Dairymen's League Coöperative Association, and the Pure Milk Association, is well known. One gathers that there are sharp differences among some of the member units. On the outside are powerful groups such as the National Association of Local Creameries. An idea of the difficulty of securing coöperation among such groups is gained from John D. Black, *The Dairy Industry and the A.A.A.*, pp. 351–354.

The Dairy Committee of the American Farm Bureau Federation might be helpful in reconciling interests. This is especially significant in view of Director Clark's emphasis upon the need to consider dairy problems with reference to agriculture as a whole. Dairy has suspected the AAA production control program, fearing that acres shifted from cotton (for example) would be turned to pasture and feed crops, thus raising dairy production; hence the restrictive Boileau amendment to the AAA of 1938—a monument to sectional vested interests. To give another example, John Brandt of Land O'Lakes told Congressman Zimmerman that he was

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Yet with all recognition of the barriers to success, this kind of organization for the evolution of research concepts and agreement on the same at least attempts to recognize the forces at work in shaping and prosecuting research policy—and attempts to provide some significant division of functions so that the "parties" to research policy formation can make those contributions for which they are peculiarly fitted.

VI. SUMMARY OF THE PROPOSAL AND SOME CONCLUDING COMMENTS

After analysis of the probable influences upon research policy formation under the Hope-Flannagan Act, the problem was set: how can procedure for research policy be organized so that scientific inquiry is effectively pointed at major problems of agricultural production and marketing that have called forth governmental control and regulatory programs in the past? Mannheim's analysis suggested that an effort might be made to show how special insights of groups differently situated with respect to a complex problem (here, the dairy industry) might be marshalled in deriving research concepts and reaching a degree of agreement on the same. Cumbersome as the procedure suggested is,[30] it has the virtue of providing rôles to the various parties in accordance with their special training or function. Moreover, enlistment of various abilities and interests in such joint effort as this might well have important educative effects in what constitutes functioning or operating citizenship in the kind of governmental process now unavoidably thrust upon all of us.

interested in cotton "because I don't want you to go into the dairy business." *Hearings*, Colmer Committee, *op. cit.*, on Agriculture and Mining, p. 1397. Similarly dairy and corn have sharply disagreed over the AAA program; see the important debate in Congress on Andresen's proposed amendment to the bill raising the Commodity Credit Corporation Loan rates to 85 per cent of parity. Said Representative Dircksen, " . . . it does not require any omniscience to perceive how skillfully this amendment . . . would just raise hell with the Corn Belt," 87 *Cong. Record*, 3413 ff. (1941). Now, as Galbraith ably demonstrated (*Fortune*, June, 1944), the American Farm Bureau Federation made its mark in the 1930's as a union of cotton and corn—the first successful one in history. But very recently, AFBF has grown markedly in the North Central dairy regions. Thus this organization might be forced by its very make-up to approach a reconciliation of the interests of its members, in and out of the dairy industry.

[30] It is hardly more cumbersome than the procedures for the evocation of much major agricultural policy; for that matter, it is no more involved than the present structure of Hope-Flannagan committees.

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Finally, four points need to be made to underline the limitations of this analysis:

1. Nothing in the analysis assumes that any of the "parties" to the process of research policy formation, or all of them together, should invade the prerogative and responsibility of major political organs for general policy determinations in this as in other fields.

2. The shared concept of the scope of research does not furnish the framework of a blueprint by which each scientist will find his appropriate assignment and methodology; elsewhere the writer has argued the importance of strengthening "programmatic research" in institutions on both sides of the federal system.[31]

3. By the same token, the process for arriving at shared concepts of the scope of the problem and the general orientation of research thereto must not obscure the fact that, in the final analysis, it is the individual research worker who must produce, but who requires a combination of favorable circumstance and sufficient time for his research.[32]

4. This paper is not written in ignorance of the inevitable presence in politics of the power struggle. It may well be that no institutionalization of the process of policy formation can be contrived that will not break apart under the thrusts of powerful interests. Nevertheless, much can be said for endeavoring to apply Burke's constitutional principle, however different the context: "Opposed and conflicting interests render deliberation not a matter of choice, but of necessity; they make all change a subject of *compromise*, which naturally begets moderation; they produce *temperaments* preventing the sore evil of harsh, crude, unqualified reformations; and rendering all the head-long exertions, in the few or in the many, forever impracticable."[33]

[31] *JFE*, May, 1947. The awe inspired by the invocation of "duplication and overlapping" should not obscure the need for continued division of authority in so important a field as research. Moreover, the state of scientific controversy ought to be recognized as precluding a blueprint. For example, economists are agreed neither as to the nature of farmers' responses to prices of dairy products nor—a somewhat different question—as to the general effectiveness of prices in allocating resources. Important differences exist as to methodology for such inquiries.

[32] An experiment station director writes, regarding more extensive comments on this point in an earlier draft of this paper: "This seems to me to be the most important factor needing emphasis in our plans for the research to be supported with Flannagan-Hope funds."

[33] *Reflections on the Revolution in France* (Harvard Classics, Vol. 24), pp. 188–189.

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Note on Political Science Research Under the Hope-Flannagan Act

Political scientists are urged to study this legislation. Although, especially since the Purnell Act of 1925, economics and rural sociology have been represented in research, teaching, and extension divisions in colleges of agriculture, political science (with two or three notable exceptions) has never been included. The writer believes that the balance of social science research and teaching has suffered accordingly; moreover, many administrators in colleges of agriculture are inclined to the same view and would include political science in their work if (a) ways and means could be found and (b) appropriately trained personnel were available.

The ways and means are provided by the Hope-Flannagan Act. Consider the illustration in dairying used above. The act specifically calls for "studies designed . . . to eliminate artificial barriers to the free movement of agricultural products"; it calls for coöperation "among federal and state agencies, producers, industry organizations, and others in the development and effectuation of research and marketing programs to improve the distribution process"; and it calls for "an integrated administration of all laws enacted by Congress to aid the distribution of agricultural products. . . . " Federal and state programs in dairying, trade barriers, formal and informal organization of markets, political influence on marketing programs, administrative problems of coördination—these and more call for political science research.

Or take tailor-making cotton to meet industrial specifications for end-products, e.g., to obtain certain lengths of fiber, tensile strength, water-resistance, etc. It is suggested that cotton production might be placed "on order"; that the mass-production process might be extended down to selected groups of farms. The requirement of collaborative research between natural sciences and economics is emphasized; but how would such a program be made effective without organization, communication, education, or indoctrination, the recording of consent, the development of inspection, and (probably) the employment of sanctions? All these problems are in the area of political science (see *Hearings*, Agricultural Research, 1946, pp. 123–124).

Finally, consider terminal markets. "There is probably no part of the marketing system for food products and probably few parts of our entire economic system as antiquated as these terminal markets, particularly for fresh fruits and vegetables." C. W. Kitchen, *Hearings*, *op. cit.*, p. 154. Analysis here would be relevant to municipal authority, state and local divisions of powers and legal interpretations thereof, zoning laws and administration, city planning and development commissions, building codes and administration, transportation systems and terminals, inspection of markets, city finance, etc

Generally, for what political science has to offer in agricultural research, see John M. Gaus and Leon A. Wolcott, *Public Administration and the U. S. Department of Agriculture*, especially pp. 394–399.

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AMERICAN GOVERNMENT AND POLITICS
THE HATCH ACT DECISIONS

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I

The principal provisions of Sections 9 and 12 of the Hatch Act, designed to limit the political activities of federal employees and of certain state employees, were challenged in two cases decided by the Supreme Court in February, 1947, and held constitutional in both instances by a divided court.[1]

Section 9 of the Hatch Act forbids most officers and employees in the executive branch of the federal government to take "any active part in political management or in political campaigns." At the same time, all such persons are to "retain the right to vote as they may choose and to express their opinions on all political subjects and candidates." The penalty for violation of the act is dismissal from the office or position held.[2] A similar prohibition against taking part in political management or political campaigns is imposed by Section 12 of the act on any state or local employees whose principal employment is in connection with any activity financed in whole or in part by federal loans or grants.[3] The activities prohibited are declared by Section 15 to be the same as those previously determined by the United States Civil Service Commission to be prohibited to employees in the classified civil service of the United States.[4]

A whole barrage of charges was brought to bear against the constitutionality of this legislation. As applied to federal employees, the attack was centered on the second sentence of Section 9 of the act, which reads: "No officer or employee in the executive branch of the Federal Government . . . shall take any active part in political management or in political campaigns." This provision was challenged as repugnant to the First Amendment because it is a deprivation of freedom of speech, of the press, and of assembly. The Fifth Amendment was alleged to be violated on a number of grounds. The provision was said to be a deprivation of liberty because it unreasonably prohibits federal employees from engaging in activities which may be lawfully carried on by persons who are not federal employees; because it effects an arbitrary and gross discrimination between federal employees who are covered and those who are exempted;

[1] United Public Workers v. Mitchell, 91 L. Ed. 509, 67 S. Ct. 556 (1947); Oklahoma v. United States Civil Service Commission, 91 L. Ed. 537, 67 S. Ct. 544 (1947).

[2] 18 USCA Sec. 61 h, 7 FCA title 18, Sec. 61 h.

[3] 18 USCA Sec. 61 l(a), 7 FCA title 18, Sec. 61 l(a).

[4] 18 USCA Sec. 61 o, 7 FCA title 18, Sec. 61 o.

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and because it is so vague and indefinite as to prohibit lawful activities as well as activities which are properly made unlawful by other provisions of law. Finally, the provision was assailed as a denial of a fundamental right of the people to engage in political activity, allegedly reserved to the people of the United States by the Ninth and Tenth Amendments. Section 12 of the act, applying to state and local employees, was attacked primarily as an invasion of the sovereignty of a state in such a way as to violate the Tenth Amendment.

In disposing of these cases, the Supreme Court had to consider a series of interconnected questions bearing upon the constitutionality of the legislation. First and foremost, what test of constitutionality should be applied in passing on the validity of the Hatch Act? Next, what is the nature and scope of the restrictions on political activity actually imposed by the act? Judged by the test chosen, does Congress have power to place such prohibitions on public employees? Provided these restrictions are valid in certain instances, has Congress gone too far in placing prohibitions on practically all federal employees? If the restrictions are proper as applied to federal employees, does Congress have authority to impose the same prohibitions on state employees by making these rules a condition for extending grants-in-aid to the states?

The United Public Workers Case deals with all except the last of these points. It is the principal consideration in the Oklahoma case.

II

The United Public Workers of America, a union affiliated with the CIO, initiated the litigation questioning the provisions dealing with federal employees. The union and a dozen individual federal employees who were union members joined in a suit for an injunction against enforcement by members of the United States Civil Service Commission of the second sentence of Section 9 (a) of the Hatch Act, previously quoted, and for a declaratory judgment of the unconstitutionality of the sentence. The lower court found that each of the individual appellants had a sufficient interest to maintain the suit, but dismissed the complaint after deciding that the questioned provision of the Hatch Act was valid.[5] An appeal was then taken to the United States Supreme Court as provided by statute.[6]

The Supreme Court split widely in deciding the issues raised in the case. Two members, Justices Jackson and Murphy, did not participate. On the main issue, three justices dissented from the decision of the remaining four. The dissenters were Justices Black, Douglas, and Rutledge. Justice Black and Justice Douglas wrote separate dissenting opinions, with Jus-

[5] United Federal Workers of America v. Mitchell, 56 F Supp. 621, 624 (1944).
[6] 28 USCA Sec. 380 a, 8 FCA title 28, Sec. 380 a.

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tice Rutledge agreeing for the most part with the views expressed by Justice Black. The majority opinion was written by Justice Reed. Justice Frankfurter wrote a concurring opinion which does not differ from the majority holding except as to whether the appeal from the lower court was timely.[7]

A preliminary issue faced by the Court was whether a justiciable controversy existed. With a single exception, none of the individual appellants had actually violated the provisions of the Hatch Act. They desired to engage in activities, such as acting as watcher at the polls, which would be contrary to the rule against political activity, and sought a declaratory judgment as to the legally permissible limits of regulation.

The majority of the Court, joined on this point by Justice Rutledge, concluded that the mere desire to engage in the forbidden activities did not present an actual controversy of which the courts can take cognizance. The threat to the interests of these appellants was termed hypothetical rather than actual. They were held to be seeking advisory opinions, instead of presenting legal issues suitable for judicial determination. The lower court, which had found that all the appellants could maintain the action, was overruled on this point.

Justice Douglas disagreed with this conclusion, for reasons concurred in by Justice Black. He thought that the requirement of an "actual controversy" was fully met. He insisted that what the appellants proposed to do was plain enough, and that clearly the act and the policy of the Commission meant that they would be discharged from their positions if they did what they proposed. A declaratory judgment seemed to him proper to pass on the constitutional rights of the appellants to engage in these activities.[8] To require them first to suffer the hardship of a discharge would, he believed, make inadequate, if not wholly illusory, any legal remedy which they might have.

Having thus disposed of the complaints of all the appellants save one, the Court turned to his case. The remaining appellant, George P. Poole, was employed in the classified service as a roller in the United States mint at Philadelphia. He had served as a ward executive committeeman of the Democratic party in Philadelphia, and on election day in 1940 had been a party worker at the polls and had acted as paymaster for the services of other party workers. Poole admitted having violated the rule against political activity, and agreed that removal from his position was

[7] The government suggested a lack of jurisdiction in the Supreme Court because of failure of appellants to docket the appeal within sixty days from the time appeal was allowed. Only Justice Frankfurter considered this a valid objection.

[8] "The threat against them is real not fanciful, immediate not remote. The case is therefore an actual not a hypothetical one. And the present case seems to me a good example of a situation where uncertainty, peril, and insecurity result from imminent and immediate threats to asserted rights." 91 L. Ed. 509, 533–534.

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mandatory under the act. The Civil Service Commission had charged Poole with political activity and had adopted a proposed order for his removal at the time this proceeding was begun. Under these circumstances, the Court agreed unanimously to take jurisdiction and to issue a declaratory judgment as to whether the Hatch Act was constitutional as applied to Poole.

Thus narrowed, the exact point to be decided was whether or not Congress can constitutionally require the dismissal of a classified federal employee, such as a roller in a United States mint, for serving on a party committee and acting as a party worker on election day.

III

Basic to a decision in this case is a choice as to the correct constitutional test which should be applied in deciding whether Congress has power to impose restrictions on the political activity of government employees. Here there is a clear clash between the approach applied by the majority members of the Court and that advocated by the minority judges.

Normally, the doctrine followed is that a presumption of validity attaches to a statute alleged to be unconstitutional, and that it will be upheld provided the Court can find a reasonable justification for the legislative action. This is the so-called "rational basis" test. However, the Court has frequently stated that no such presumption of validity attaches to legislation on its face restricting the basic liberties guaranteed by the First Amendment, which are held to occupy a preferred place in our scheme of constitutional values. Any attempt at restriction "must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger."[9] Since the Hatch Act had been challenged as an invasion of these basic liberties, should it be subjected to the more difficult "clear and present danger" test, or to the usual "rational basis" standard?

The latter test is definitely accepted by the majority as applicable to the Hatch Act. The decision of the Court rests on the assumption, as stated by Justice Reed, that Congress may regulate the political conduct of public employees within reasonable limits, even though the regulation

[9] Thomas v. Collins, 323 U.S. 516, 530, 89 L. Ed. 430, 440 (1945). The Court went on to say in this case: "The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice. These rights rest on firmer foundation. Accordingly, whatever occasion would restrain orderly discussion and persuasion, at appropriate time and place, must have clear support in public danger, actual or impending. Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation." For similar statements, see Cantwell v. Connecticut, 310 U.S. 296, 84 L. Ed. 1213, 60 S. Ct. 900 (1939); Thornhill v. Alabama, 310 U.S. 88, 84 L. Ed. 1093, 60 S. Ct. 736 (1939); and Murdock v. Pennsylvania, 319 U.S. 105, 87 L. Ed. 1292, 63 S. Ct. 870 (1942).

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interferes to some extent with unfettered political action. The fundamental human rights guaranteed by the Constitution are not absolutes. Equally worthy of consideration is the responsibility resting on Congress to provide and maintain an efficient public service. It is not the function of the judiciary to strike down measures deemed desirable by Congress, except in the event that no reasonable basis appears for upholding the congressional action.[10]

Opposed to this view is that voiced by Justice Douglas, echoed by Justice Black, and accepted tacitly by Justice Rutledge. "In other situations where the balance was between constitutional rights of individuals and a community interest which sought to qualify those rights," says Justice Douglas, "we have insisted that the statute be 'narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest' of government. . . . That seems to me the proper course to follow here."[11] Similarly, Justice Black emphasizes the point that laws restricting these liberties should be "narrowly drawn to meet the evil aimed at and to affect only the minimum number of people imperatively necessary to prevent a grave and imminent danger to the public."[12] According to this doctrine, the Hatch Act restrictions on political activity could be upheld only by a showing of a "clear and present danger" to the civil service system.

Obviously, a holding that the Hatch Act is constitutional would be much harder to reach under the second doctrine than the first. Added to this consideration, as far as the minority judges were concerned, was the much more apprehensive view taken by them as to the nature and extent of the restrictions actually imposed by the Hatch Act.

The majority opinion stresses the limited nature of these restrictions. Justice Reed notes that the legislation does not interfere with a wide range of public activities. Only partisan political activity is forbidden. This covers active participation in political management and political campaigns, where the purpose is the attainment of party objectives. The right to vote without hindrance is expressly provided for. Likewise, federal employees, as well as other citizens, are allowed to give voice to public or private expressions on public affairs and personalities, provided their activities are not directed toward party success. The implication is that the restraints are not overly important, or burdensome in their application.

Justice Black vigorously takes exception to this analysis. In his eyes,

[10] "The determination of the extent to which political activities of governmental employees shall be regulated lies primarily with Congress. Courts will interfere only when such regulation passes beyond the general existing conception of governmental power." 91 L. Ed. 509, 524.

[11] 91 L. Ed. 509, 536.

[12] 91 L. Ed. 509, 528.

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the constitutionally protected liberty of the citizens to whom the act applies is reduced to "less than a shadow of its substance."[13] He finds the privilege of expressing political opinions to be practically nullified because any such expression might lead to a charge of active participation in political management or political campaigns. He points to the long list of activities clearly prohibited by the Civil Service Commission in rules previously issued by it, which are made binding by Section 15 on all employees covered by the act. He charges that many more of these prior prohibitions of the Commission are vague and uncertain. He protests against a warning issued by the Commission that employees are accountable for political activity by members of their families if the purpose is evasion of the intent of the act, alleging that this strips the families of public employees of their freedom of political action also. He concludes that the sum of political privilege left to public employees covered by the act, and to their families, is hardly worth mentioning.[14] Justice Douglas likewise says that the issue is "political sterilization" of the industrial group of government employees, and infers that the Hatch Act would treat them as "second-class citizens."[15] The dissenting opinions emphasize that these bans on political activity apply to approximately three million federal employees, as well as to many thousands of state employees. The conclusion reached is that the Hatch Act restrictions are so drastic as to remove a sizeable proportion of the electorate from full participation in public affairs, and to convert these citizens into "mere spectators of events upon which hinge the safety and welfare of all the people, including public employees."[16]

IV

With ideas thus diverging as to the test which should be applied to the Hatch Act, and as to the nature of the restraints imposed by the act, the Supreme Court grappled with the crucial problems as to whether Congress can place such prohibitions at all, and if so, whether they can be applied to all the employees covered by the act.

To these questions, the opinions of the Court provide three different sets of answers. The answers that prevail, of course, are those set forth by Justice Reed in his opinion for the majority. Another concept is developed by Justice Douglas. The third response is worked out by Justice Black, speaking for himself and Justice Rutledge.

[13] 91 L. Ed. 509, 531.

[14] "They may vote in silence; they may carefully and quietly express a political view at their peril; and they may become 'spectators' (this is the Commission's word) at campaign gatherings, though it may be highly dangerous for them to 'second a motion' or let it be known that they agree or disagree with a speaker." 91 L. Ed. 509, 528.

[15] 91 L. Ed. 509, 536.

[16] 91 L. Ed. 509, 531.

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Relying on precedent and application of the "rational basis" doctrine, the majority finds the Hatch Act to be valid specifically as applied to an industrial employee such as Poole, and impliedly as it affects other types of employees covered by the act. Congress bears the major responsibility for providing an efficient public service. Experience has shown that active partisan activity by government employees may be a threat to good administration. The principle of required political neutrality for classified public servants, although perhaps not indispensable, is now generally accepted as a sound element for efficiency. Hence Congress may place limits on the political activities of federal employees which are reasonably related to the preservation of their political neutrality.

Precedent is invoked to bolster the decision. As long ago as 1882, the Supreme Court upheld prohibitions against certain types of political activity, particularly money contributions for political purposes by government employees to other officials or employees of the government.[17] For several decades, as the Court points out, the practice of excluding classified employees from party offices and personal political activity at the polls has been in effect under the Civil Service Act and Civil Service Rules. The Court refers to these restrictions on classified employees and to the Hatch Act provisions with their broader coverage as directed at political contributions of energy by government employees, and considers them similar in purpose to the statutes against political contributions of money. Such limitations are well within the bounds set by the Constitution on the power of Congress to deal with what it considers to be the evils of political activity by government employees. "Congress," says the Court, "is not politically naive or regardless of public welfare or that of the employees."[18] Considering the responsibility of Congress to maintain an efficient public service, the long standing and general acceptance of political restrictions on government employees, and the limited character of the restraints imposed, the Court concludes that Congress had a reasonable basis for enacting this legislation.

As to the argument urged against the act that Congress had gone further than necessary in prohibiting political activity to all types of classified employees, the majority makes short work of it. This point, stressed by Justice Douglas in his dissent, was that even though Congress might place these restrictions on political activity by administrative employees, it could not do so with regard to industrial workers such as Poole, a roller in a United States mint. The majority opinion simply states that whether there are differences between administrative employees and industrial workers, and what those differences may be, are matters of detail to be

[17] *Ex parte* Curtis, 106 U.S. 371, 27 L. Ed. 232, 1 S. Ct. 381 (1882); see also United States v. Wurzbach, 280 U. S. 396, 74 L. Ed. 508, 50 S. Ct. 167 (1930).

[18] 91 L. Ed. 509, 523.

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worked out by Congress. The constitutional power to regulate is not affected by decisions reached by Congress on these matters. Hence, although the Court actually approved of the Hatch Act only as applied to Poole, it seems clear that the majority would have reached the same result no matter what category of employee had attacked the act.

Turning to the argument of Justice Douglas, the pivotal point for him in this case is the difference between industrial workers and administrative employees in the civil service. As far as the entire group of civil servants in the administrative category is concerned, he is apparently willing to permit Congress to cut them off from partisan activities. He recognizes the importance of a strong civil service system. He realizes the threat that partisanship can make to the effectiveness of administration. He agrees that it is desirable "to develop a civil service which can and will serve loyally and equally well any political party which comes into power."[19]

In working toward this objective, Congress should be permitted to protect the integrity of the entire group of employees who have any part in policy-making or administrative action, by insulating from partisan activities even the lower levels of these administrative employees, such as clerks and stenographers. He intimates that, even by applying the "clear and present danger" test, he would hold the Hatch Act constitutional as applied to employees in these administrative positions.[20]

Similar restrictions on political activity by industrial employees such as a roller in the mint, on the other hand, do not to his mind meet that test of constitutionality. Justice Douglas asserts that Poole "is as remote from contact with the public or from policy-making or from the functioning of the administrative process as a charwoman."[21] No showing is made of a clear and present danger to the civil service system which justifies a sacrifice of the political rights of industrial workers. If Congress uncovers specific evils involving industrial workers, specific treatments must be developed to cope with them. For example, it might be proper to enact legislation protecting industrial workers from political pressures by those in supervisory positions, or to prohibit political activities by industrial workers on government premises or during working hours.

The opinion of Justice Black shows even less of an inclination to authorize interference with the political activities of public employees. He be-

[19] 91 L. Ed. 509, 535.

[20] Among the appellants whose complaints were not considered by the Court were an economic statistician, a financial analyst, a labor economist, a procedural assistant, and other employees who probably would be placed by Justice Douglas in the administrative category. He states that a discussion of the constitutionality of their claims would be premature, since the Court did not reach that issue. 91 L. Ed. 509, 534.

[21] 91 L. Ed. 509, 535.

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lieves that the Hatch Act restrictions muzzle several million citizens, with consequences that are a threat to popular government. Although recognizing that forced contributions of money and influence by public employees may be prohibited, he protests against a drastic stifling of political utterances and political activities of public employees as a class. Nothing in the previous Supreme Court decisions cited by the majority seems to him to lend the slightest support to the Hatch Act.

No argument based on the insuring of clean politics or good administration convinces Justice Black that broad restraints on all public employees may be justified because a few of them might abuse their political privileges. If some public employees coerce other citizens, or if some higher officials in the public service coerce their subordinates, laws can be narrowly drawn to deal with the offenders. Nor does he rely on the distinction between industrial workers and administrative employees to permit more severe political limitations on the latter group. The position taken by him and by Justice Rutledge indicates, therefore, that whatever the type of position held by the employee challenging the Hatch Act, they would have held the act unconstitutional.

V

In the second case, Oklahoma v. United States Civil Service Commission,[22] the Supreme Court considered the validity of Section 12 of the Hatch Act. This provision extends the ban on active participation in political management or in political campaigns to state and local employees whose principal employment is in connection with any activity financed in whole or in part by federal loans or grants.

France Paris, while a member of the State Highway Commission of Oklahoma, an agency whose activities were financed in part by loans and grants from a federal agency, had occupied the position of chairman of the Democratic state central committee for Oklahoma, and had participated in the staging of a "victory dinner" designed to raise party funds.

The United States Civil Service Commission determined that this constituted taking an active part in political management and in political campaigns. As provided in Section 12(b) of the Hatch Act, the Commission sent notice to Mr. Paris and to the state highway commission that it considered that the violation warranted his removal as highway commissioner. When the removal was not made by Oklahoma, the Civil Service Commission prepared, as the act further provides, to order as a penalty the withholding from highway grants to Oklahoma of an amount equal to two years' compensation at the rate received by Mr. Paris.

Meanwhile, the state of Oklahoma began proceedings, provided by the

[22] 91 L. Ed. 537, 67 S. Ct. 544 (1947)

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statute, for court review of the Commission's action. The lower courts upheld the Commission, and the case was appealed to the Supreme Court.

In the Supreme Court, the first issue was whether Oklahoma had standing to question the constitutionality of the act. On this point, the Court held, over objections stated by Justice Frankfurter in a concurring opinion, that Oklahoma was a "party aggrieved" by the determination of the Commission within the statutory provision permitting review, and could attack the constitutionality of the statute upon which the Commission's determination was based.

In the United Public Workers case, the Court had already decided that acting as an official of a political party violates the provision against taking part in political management or in political campaigns, and had upheld the constitutionality of that provision. Consequently, the remaining question was whether the penalty aspects of Section 12 of the act invaded the sovereignty of Oklahoma in such a way as to violate the Tenth Amendment. Oklahoma contended that the coercive effect of the authorization to withhold sums allocated to a state constitutes an interference with the reserved power of the state.

To this the Court replied that the Tenth Amendment had not been violated. "While the United States is not concerned and has no power to regulate local political activities as such of state officials, it does have power to fix the terms upon which its money allotments to a state shall be disbursed."[23] Congress had exercised this power for the valid purpose of seeking better public service by requiring those who administer federal funds to abstain from active political partisanship. The means used were appropriate to the end sought. An incidental effect on certain activities within the state does not invade the state's sovereignty or render invalid the action of Congress.

Since this power to place conditions on federal offers of financial benefits to a state has often been recognized by the Supreme Court,[24] it is not surprising to note that no member of the Court objected to this treatment of Oklahoma's claim. Justices Black and Rutledge did dissent without opinion from the decision, presumably because of their aversion to the imposition of the Hatch Act restraints on public employees, state or federal. Justice Douglas joined the majority here, since Paris, obviously an administrative official, did not qualify for the protection he had urged on behalf of Poole in the previous case.

[23] 91 L. Ed. 537, 546.

[24] For example, Massachusetts v. Mellon, 262 U.S. 447, 67 L. Ed. 1078, 43 S. Ct. 597 (1923), and Steward Machine Co. v. Davis, 301 U.S. 548, 81 L. Ed. 1279, 57 S. Ct. 883 (1937).

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VI

An analysis of the Hatch Act decisions reveals a twofold significance. They make a substantial contribution to constitutional doctrine with regard to the proper balancing of the public interest as against individual liberties. Furthermore, they contain provocative suggestions for the formulation of legislative policy regulating the political activities of public employees.

The "clear and present danger" standard is apparently rejected as the test of constitutionality for legislation passed by Congress which, in the interest of an efficient public service, places restraints on political participation by government employees. True, only four of the nine members of the Court actually endorsed the "rational basis" doctrine as an alternative, since two justices did not participate in these decisions. The possibility presumably exists that a future case in which the entire Court sits might modify this holding. At any rate, it is definite, in view of the stand taken by Justice Douglas, that a solid majority of the entire membership is already on record as conceding the power of Congress over the political conduct of employees who have some part in policy-making or administrative action.[25]

On this matter of constitutional power, the majority opinion is convincing.[26] It recognizes the advantages of legislative discretion in adopting measures to promote an effective public service. Congress should have leeway to act as the teachings of experience dictate. It admits the dangers of judicial intervention which would stay the hand of Congress. In that event, the Court realizes, the nation would be left "impotent to deal with what many sincere men believe is a material threat to the democratic system."[27] The decision is based on the valid assumption that Congress may, as a condition of employment, place on citizens who are public employees restraints which may not be imposed on all citizens.[28] At the

[25] A further indication of the tendency to give Congress and the Civil Service Commission a free hand in using the dismissal power is the recent case in which the Court refused to review the dismissal of a classified civil service employee for membership in a Communist front organization. Friedman v. Schwellenbach, Memoranda Case No. 990, petition for writ of certiorari denied, March 17, 1947, 91 L. Ed. 790. See *New York Times*, Mar. 17, 1947, p. 1.

[26] For comments by Senator Hatch on these Supreme Court decisions, see *Cong. Record*, Vol. 93, No. 30, pp. 1092–1093 (Feb. 14, 1947).

[27] 91 L. Ed. 509, 523.

[28] The famous epigram of Justice Holmes in the Massachusetts case of McAuliffe v. New Bedford, 155 Mass. 216, 220, 29 NE 517 (1891) is quoted approvingly by the Court. In a proceeding where a policeman had been removed for political activity, Justice (then Judge) Holmes wrote: "The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman." 91 L. Ed. 509, 522, fn. 34.

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same time, ample protection is available to shield individual liberties against an abuse of Congressional power. The Court takes pains to note that there are limitations on that power which would exclude, to take an obvious example, such a regulation as one providing that no Republican, Jew, or Negro shall be appointed to federal office.

The extreme position taken by Justices Black and Rutledge that the Hatch Act provision is unconstitutional on its face, seems, on the other hand, to emphasize unduly the threat to citizen participation in public affairs, at the expense of Congressional power to cope with problems which are the primary responsibility of Congress. The result would be an encroachment by the courts on a legitimate legislative function. Here Congress is not legislating to interfere with the political activities of the citizenry in general, but restraining federal employees and a limited number of state employees from partisan actions for the purpose of protecting the integrity of the public service. Justice Black fears that the reasoning behind the Hatch Act might lead to legislation in the future which would deprive millions of farmers or business men of all right to participate in elections because Congress thought that federal farm or business subsidies might prompt some of them to exercise a corrupting influence on politics. It would seem an adequate answer that the Supreme Court will have a chance to judge such a law should it be enacted, and that nothing in the present decisions indicates that approval would be given.

The distinction drawn by Justice Douglas has more merit, although he does not succeed in demonstrating that it is substantial enough to be converted into the decisive test for constitutionality. Congress is a more appropriate body than the Supreme Court to decide on differences in the character and the treatment of administrative and industrial employees. The situation that he postulates in which a broad policy of state ownership of basic industries, such as now adopted in England, might lead under the majority decision to debarring hundreds of thousands of industrial workers from normal political activity, may safely be left for the future concern of Congress and of the Supreme Court.

Much more suggestive than their contribution to the constitutional aspects of the Hatch Act are the implications of the dissenting opinions as to the legislative wisdom of the statute as now written. Many of the arguments which fall short of proving that the Hatch Act is unconstitutional have a telling effect in questioning its expediency. The picture painted by Justice Black of the extent to which public employees have been stripped of their political privileges by the Hatch Act may be somewhat overdrawn, but surely it is accurate enough to give pause to anyone who may regard these legal restraints as inconsequential. The practical effect of this legislation is to quarantine a sizeable segment of the population from participation in many important aspects of political life. The number of citizens

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in the group thus circumscribed is more likely to increase than to diminish.

There does seem to be a contradiction between the desired objective of a more effective administration of governmental affairs, on the one hand, and on the other, the means used of removing from full participation in the processes of democracy most of the individuals who are entrusted with the task of making democratic government work. Granted that weighty reasons tested by experience underlie the policy embodied in the Hatch Act, it seems pertinent to reconsider that policy in the light of the criticisms brought out by these opinions.

The guide for reëxamination would be that public employees should be shorn of political privileges only when correspondingly substantial benefits accrue to the civil service system. In other words, the "clear and present danger" concept might well be shifted from the field of constitutional doctrine to that of legislative determination. Congress should, as a matter of legislative policy, be extremely cautious in enacting laws restricting the political activities of governmental employees, by providing specific remedies for specific evils rather than drastic prohibitions sweepingly applied as a palliative to supposed or imperfectly understood threats to good administration.

Should the Hatch Act be scrutinized in this light with a view to possible revision, the idea which Justice Douglas develops as to the differences between categories of employees[29] might well be a point of departure. Surely there are much more pressing reasons for insisting on the political neutrality of a civil servant who is a bureau head in a federal department, or even an information clerk who has contact with the public, than one who is a janitor, an elevator operator, a machinist, or like Poole a roller in a mint. In the British civil service, recognition of this diversity has led to a marked difference in the treatment of administrative and industrial employees, with results which might prove instructive in handling the problem of political activity by public employees in this country.[30]

The Hatch Act decisions serve the dual purpose of upholding the constitutional power of Congress to take reasonable measures to protect the public service against the evils of employee partisanship, and at the same time of focussing attention on the wisdom of a legislative policy which will encroach only as far as positive necessity demands on the opportunity of all citizens to participate fully in the processes of democratic government.

[29] On this point, Justice Douglas quoted from Fritz Morstein Marx, *Public Management in the New Democracy* (1940), pp. 205, 206.

[30] A bill has been introduced in the Senate by Senator Ellender to repeal the Corrupt Practices Act of 1925 and the Hatch Act, and substitute new legislation to be known as the Federal Corrupt Practices and Pernicious Activities Act of 1947. This proposal would not, however, change materially any of the provisions of the Hatch Act dealt with in this article. See *Cong. Record*, Vol. 93, No. 79, pp. 4251–4254 (April 28, 1947).

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STATE CONSTITUTIONAL LAW IN 1946–47

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The oft-heard argument in behalf of federalism that the states furnish important laboratories for social and political experimentation is illustrated by a good many new constitutional provisions interpreted for the first time this year. Two states, Missouri and Georgia, adopted entirely new constitutions in 1945, important sections of which have come before the highest courts for interpretation. One of these, the Georgia constitution of 1945, provides specifically: "Legislative acts in violation of this constitution or the constitution of the United States, are void, and the judiciary shall so declare them." Such a provision may very well raise more questions than it settles—for example, what effects can be accorded unconstitutional acts?; can the other agencies of government refuse to perform under statutes they consider unconstitutional?; can the judiciary declare acts of the governor and other officers unconstitutional?; etc. Such questions have not as yet been raised. But there is some evidence that we may be embarking on an era of constitutional revision similar to that which followed the Civil War. If so, the problems of constitutional law now being discussed may furnish a clue to the kind of new documents to be written. This year the emphasis has been on civil rights and methods of adjusting state finances to the rapidly fluctuating value of the dollar—problems which naturally arise out of the intense social and economic conflicts of the past decade.

I. GOVERNMENTAL ORGANIZATION

State Government. The most newsworthy state decision of the year involved the title to the office of governor in Georgia.[1] The news reports of the entire history of the controversy were so complete that no more than a summary of the facts is required here. In the gubernatorial election of November 5, 1946, a majority of the electoral votes under Georgia's district system were pledged for Mr. Eugene Talmadge. His death before the convening of the General Assembly in January, 1947, at which time the canvass of the vote for governor was to take place, posed the problem of how to select a successor to Governor Arnall. The Assembly passed a resolution resolving the issue by claiming its right to elect a governor, and proceeded to elect Mr. Herman Talmadge, who had received the largest number of write-in votes in the election. At about the same time, Governor Arnall, as hold-over incumbent, resigned in favor of Mr. Thompson, who had been elected lieutenant governor in the November election. The con-

[1] Thompson v. Talmadge, 41 S.E. (2nd) 883 (Ga., Mar., 1947).

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stitution provided that the Assembly should "open and publish the returns," but, "if no person shall have such majority, then from the two persons having the highest vote, who shall be in life and shall not decline an election at the time appointed for the General Assembly to elect, the General Assembly shall immediately, elect a Governor *viva voce* . . . ." And, "Contested elections shall be determined by both houses of the General Assembly in such manner as shall be prescribed by law."

The majority opinion, although poorly written, seems to be based on four principal arguments. First, that the constitutional clause quoted above, which established judicial review, refers not only to legislative "acts" in violation of the constitution, but also to lesser forms of legislative action such as resolution. Since, further, the question of title to office "is a judicial question—one which it is not only the duty of the courts to decide, but one which, in our judgment, it is the exclusive province of the judiciary department to determine,"[2] the federal rule that such questions are political[3] does not apply in Georgia. This is so because "if in the present cases a construction of the constitution is involved, that is a justiciable question which the courts have the exclusive jurisdiction to adjudicate in determining such cases."[4] Secondly, "in publishing the returns and declaring the results, the members of the General Assembly were performing a strict and precise duty identical in character with that which rests on any and all persons who are merely authorized to canvass."[5] As such, they were performing a mechanical and non-discretionary duty completely separated from their function of choosing a governor when no candidate has a majority of votes. Nor is this case to be considered as an instance of a contested election, since the election results were not challenged. In the third place, the power claimed by the legislature cannot be implied from any express provision of the constitution; for, unlike legislatures in other states, the Georgia Assembly possesses only enumerated and not residual powers. In particular, "in electing a governor it would necessarily act as an agency or body of *special and limited* jurisdiction, and the facts essential to the existence of its jurisdiction in such matter should affirmatively appear."[6]

Finally, since the constitution provides that the incumbent governor is authorized to occupy the office "until his successor shall be chosen and qualified," and since a successor had been chosen but had not qualified by reason of his death, Governor Arnall was the legal occupant of the office until the date of his resignation, at which time the legally chosen and qualified lieutenant governor, Mr. Thompson, assumed the office.

Two dissenting opinions were filed. The first, written by the chief jus-

[2] Quoting from Low v. Towns, 8 Ga. 360, 367 (1850).
[3] See Coleman v. Miller, 307 U.S. 433, 59 S. Ct. 972 (1938).
[4] 41 S.E. (2nd) 883, 890. [5] *Ibid.*, 892, 893. [6] *Idem*, 895.

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tice, agreed, at least in part, that the controversy was a justiciable one. It also agreed that the Assembly lacked any implied or inherent power to act; that specific provisions of the constitution pointed the solution of the controversy. The disagreement came in characterizing the nature of the legislature's function. The chief justice maintained that the duty of declaring the duly elected governor is an adjudicatory one, to be exercised on the existing state of facts and not on facts as they existed at the time of the election. Therefore, the reference to *living* candidates from which the Assembly makes its choice need not be repeated in the clause concerned with qualifying the "person" receiving the majority of the votes. Once having shown the authority of the Assembly to act, he believed that the decision taken was a political question not subject to judicial review, although he was careful to point out that it was the correct one. The other dissent by Justice Candler adopted the principal Talmadge argument, that the case was not a justiciable one in any sense.

Because of unfortunate experience during the depression, a few states have constitutional provisions forbidding their state governments to borrow money except in anticipation of tax receipts. Such provisions cause considerable embarrassment when the state wishes to engage in long-term improvement programs of one kind or another. One accepted evasion of such prohibitions lies in creating public corporations with the authority to borrow on their own credit for such activities as are entrusted to them. But when the project involved is not self-liquidating over a fairly short time, difficulty in floating such securities may be encountered. The Georgia Ports Authority was faced with such a problem and the legislature attempted to come to its rescue.[7] By statutes passed in 1946, the state pledged to pay whatever deficits might accrue, and the revenue to be derived from a lease between the state and the Western and Atlantic Railroad was also pledged to the Authority. These acts were held unconstitutional because they constituted a grant of the state's credit contrary to the prohibition of a state debt and did not fulfill the constitutional requirement that appropriations must "be for a specific sum of money."[8] Alabama, perhaps, may furnish the answer to its neighbor state. There the legislature gave the governor authority to release all funds in excess of expenses, appropriations, and service on existing debt for the payment of debts of state agencies.[9] The agency involved here was the University of Alabama, which had taken over the Birmingham Hospital from the county together with its bonded debt, largely held by the R.F.C. Such a statute was held not to create a state debt contrary to the constitution, nor to

[7] State Ports Authority v. Arnall, 41 S.E. (2nd) 246 (Ga., Jan., 1947).
[8] Compare Smith v. Robertson, 41 S.E. (2nd) 631 (S.C., Feb., 1947).
[9] Norton v. Lusk, 26 So. (2nd) 849 (Ala., June, 1946).

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violate those provisions of the constitution forbidding expenditures except under legislative authorization. In the latter case, it was held that the governor had been delegated authority to find facts under standards fixed by the legislature. To the same effect is a decision of the Florida court holding constitutional a statute giving the budget commission and the governor authority to transfer such surplus funds to the building fund.[10]

Constitutional tax provisions came in for only minor consideration in several states. In New Mexico it was held that a constitutional amendment passed at the end of World War I which permitted the legislature to grant a property tax exemption of $2,000 to servicemen or their widows applied to veterans of World War II or their widows.[11] Since the amendment, as well as the statute passed under it, contained no specific reference to any particular war, it was presumed by the court that all who voted on the matter must have known at that time that other wars would follow.

Elsewhere it was clearly implied that a document stamp tax in lieu of the property tax on mineral leaseholds on lands in the state was no violation of the constitutional requirement of uniformity in property taxation, since the purpose of the law is legitimate and clear, namely, to encourage the investment of capital in such enterprises.[12] It was also decided that the constitutional provision limiting expenditures from social security funds to "assistance" did not prevent the legislature from authorizing the use of reasonable amounts for burial expenses of old age pensioners.[13] The Kentucky court reversed a previous decision[14] to hold that the constitution requires the levy of property taxes on the principal of a life insurance annuity held by a Boston corporation.[15] In view of the reversal, however, the court held that the decision was to apply prospectively only. Finally, the effort of the Iowa legislature to equalize the funds of school districts whose taxable resources are unequal was crowned with success.[16] The barrier was a constitutional provision which allocated revenues from federal land grants and "such other means as the General Assembly shall provide" to school districts in proportion to their respective number of

[10] State *ex rel.* Caldwell v. Lee, 27 So. (2nd) 84 (Fla., July, 1946). See also Dowe v. Egan, 133 Conn. 112, 48A (2nd) 735 (July, 1946) holding that the legislature may authorize the state security administrator to "order" payments from state funds; and State *ex rel.* Bd. of Aero. v. Sims, 41 S.E. (2nd) 506 (W. Va., Feb., 1947), approving authorization of the board to requisition sums for city and county airports.

[11] Flaska v. State, 177 P. (2nd) 174 (N.M., Dec., 1946).

[12] Miss. Pwr. & Lt. Co. v. Love, 27 So. (2nd) 850 (Miss., Nov., 1946).

[13] Redman v. Davis, 174 P. (2nd) 945 (Colo., Nov., 1946).

[14] Button v. Hikes, 296 Ky. 163, 176 S.W. (2nd) 112 (1943).

[15] Button v. Drake, 195 S.W. (2nd) 66 (Ky., June, 1946).

[16] Kleen v. Porter, 23 N.W. (2nd) 904 (Iowa, Oct., 1946).

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children of school age. It was held that the "means" referred to appropriations to the permanent school funds and not appropriations made directly for school use.

Legislative reapportionment was the subject of three cases raised in Oklahoma.[17] The constitution imposes on the legislature the duty of redistricting state senatorial districts, but the legislature has refused to act since 1930. The court held that although the constitution provides for judicial review of legislative apportionment, the judiciary has no power to compel the legislature to act. These cases took the form of petitions to require the election officers to list petitioners as candidates for the additional seats to which Tulsa county was entitled. In Wisconsin, a much more ingenious effort was made to accomplish a reapportionment.[18] There an injunction was sought to prevent any elections to the state legislature, on the ground that the 1931 reapportionment act became invalid at the end of the 1941 session of the legislature and there was therefore no act in existence under which such elections could be held. The court dismissed the case for want of jurisdiction because the constitution speaks directly to the legislature with respect to reapportionment, and because to act favorably on the petition would be to prevent the only possible solution of the difficulty, a legislative reapportionment. The court also pointed out that it could not enforce such a decision, and that the likelihood of its being obeyed was very slight.

Separation of Powers. The perennial problem of the relative importance and functions of the three departments of state government seems to be producing an increasing volume of litigation. The comparatively lesser rôle of the state executive in relation to the President is illustrated by an Oklahoma decision involving the power to declare an emergency.[19] Under the Federal Servicemen's Readjustment Act, the governor made an allocation of $30,000 to the state soldier's relief commission established by state statute.[20] This fund was needed to pay petitioner's claim as directed in a certificate of the governor to the auditor and treasurer, the statutory fund of the commission having been exhausted. As required by the state law, the certificate contained a claim of emergency. The court reaffirmed the rule of a prior decision[21] holding that such a declaration of an emergency

[17] Latting v. Cordell, 172 P. (2nd) 397; Temple v. Cordell, 172 *ibid.* 412; Hoyt v. Cordell, 172 *ibid.* 414 (Okla., Aug., 1946). Following Burns v. Flynn, 268 N.Y. 601, 198 N.E. 424 (1935).

[18] State *ex rel.* Martin v. Zimmerman, 249 Wis. 101, 23 N.W. (2nd) 610 (June, 1946). To the same effect, see Colegrove v. Green, 328 U.S. 549, 66 S. Ct. 1198 (1946).

[19] Cope v. Childers, 170 P. (2nd) 210 (Okla., June, 1946).

[20] The statute was found constitutional in Wells v. Childers, 165 P. (2nd) 358 (Okla., 1945).

[21] Holt v. Childers, 168 P. (2nd) 890, 893 (Okla., Apr., 1946).

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would not be disturbed except "for lack of power or an abuse of discretion." Since the challenge was limited to the power and not to the facts, the discretion was assumed to be soundly exercised. The court took notice of the fact, as pointed out by the governor, that the legislature had adjourned before the end of hostilities, which latter event was bound to increase the benefits claimed under the law. This, it was held, justified calling the situation an "emergency."

The dissent took a somewhat different ground, alleging that under the facts of the case, the opinion in effect was authorizing the governor to spend money which had not been appropriated by the legislature; and that the occasion of an emergency was ground for a special session of the legislature and nothing else.

The supreme court of Mississippi was called on to discuss the relation between the governor's constitutional power to pardon and the statutory power of courts to suspend sentences in criminal cases.[22] This represented the first challenge of the statute on these grounds since its passage in 1914. The opinion follows the well-defined argument that sentencing criminals is a proper judicial function which may be exercised while the court has jurisdiction of the case; and that the court has been given jurisdiction extending over the period of the suspension by the statute.

In Nebraska, the question of whether a member of the state liquor control commission was an "executive" officer was raised in connection with a constitutional provision forbidding appointment of such officers to any other state office during their elective or appointive term.[23] The constitution enumerates certain executive officers and includes as such "the heads of such other executive departments as may be established by law. . . ." The act creating the commission had been passed by a two-thirds vote, which is required for the creation of executive officers, but there was no evidence that this fact was other than accidental. The court was forced to decide the question solely on inference and indirect evidence, since the intent of the framers of the constitution's provisions was uncertain, the proceedings of the convention having been destroyed by fire. In view of the facts that appointments to the commission were not submitted to the legislature for confirmation for the first eight years of its existence, that members take no oath of office as department heads, that they do not post the $50,000 bond required of executive officers by the constitution and statutes, and that they are removable only for cause, rather than at the pleasure of the governor, as is true of department heads, members of the commission are not executive officers. Merely because the commission performs some executive functions does not make it an executive agency.

[22] Gabriel v. Brame, 28 So. (2nd) 581 (Miss., Jan., 1947).

[23] State *ex rel.* Johnson v. Chase, 25 N.W. (2nd) 1 (Neb., Nov., 1946).

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The proper criteria, the court maintains, involve whether the officer is subordinate to the governor, whether his functions are exclusively or primarily law enforcement, and whether they concern "the political government of the state."

The supreme court of Oregon read a lesson to the lower courts of that state on the duty of trial court judges.[24] In a divorce action involving custody of the children, the trial court, evidently pressed for time, approved a stipulation of the parties that the custody issue was to be determined by the results of an investigation. The court authorized the investigation and received the report. Without setting it forth in the record, it was used to determine the question of custody. The supreme court, quoting from California opinions,[25] reversed this part of the decree on the ground that the trial court had delegated its judicial function, that of deciding on conflicting evidence, to another. The error, of course, consisted in not treating the investigation as an intermediate report and allowing argument on it prior to its acceptance.

In California, it was held that where failure to file notice of appeal in a criminal case within the statutory time limit was due to the negligence of state prison employees, "the ends of justice can only be served by relieving from the default and thus protecting the constitutional powers of this court and the fundamental rights of appellant."[26]

The judicial power also reseived the attention of the Indiana supreme court. A statute of that state, in order to speed up the decision of court cases, provides that a "judge shall not, except in case of severe illness of himself or family, hold the same under advisement for more than sixty (60) days . . . if the judge shall fail to determine any issue of law or fact which has been taken under advisement within ninety (90) days," the case can be withdrawn, the judge disqualified, and a special judge appointed—all at the request of either litigant. Relator sought a writ of prohibition to prevent further action in his case, which had been held under advisement for over ninety days.[27] The judge challenged the constitutionality of the act as a legislative encroachment on the judicial power. The court points out that this is the first direct constitutional challenge of the act, which has been on the statute-book for several years. This judge was evidently the first to catch the implied doubts as to its constitutionality contained in previous cases where the question was not clearly raised.[28] These doubts

[24] Nelson v. Nelson, 176 P. (2nd) 648 (Ore., Jan., 1947).

[25] Fewel v. Fewel, 23 Cal. (2nd) 431, 144 P. (2nd) 592 (1943); Washburn v. Washburn, 122 P. (2nd) 96 (Cal., 1942).

[26] People v. Slobodion, 176 P. (2nd) 937, 940 (Cal. App., Feb., 1947).

[27] State *ex rel.* Kootas v. Johnson, 69 N.E. (2nd) 592 (Ind., Nov., 1946).

[28] See, for example, State *ex rel.* Harlan v. Munic. Ct., 221 Ind. 12, 46 N.E. (2nd) 198 (1942).

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are then resolved against the constitutionality of the act. "Any act by which the legislature attempts to hamper judicial functions or interfere with the discharge of judicial duties is unconstitutional and void." This act interferes with the "inherent" power of the courts to judge of the order in which cases will be disposed of. Since this is an inherent power of any court, it is possessed by all courts exercising judicial power, whether established by the constitution or, as here, by legislative act. The Pennsylvania orphans courts were found to be subject to limited legislative control, although constitutionally established.[29] The constitution provided that such courts "shall exercise all the jurisdiction and powers now vested in or which may hereafter be conferred . . . ." Before this constitution was adopted in 1873, such a court had complete supervisory authority over executors of estates. But in 1945 a statute was passed which limited their authority by denying them the right to set aside contracts for sales of property where a higher bid had been obtained. The court held that such a modification, short of complete abolition, was possible since the "vested" jurisdiction prior to 1873 was statutory. The court's opinion in part is based on the fact that these are not common law courts.

The body of cases defining the limits of "inherent judicial power" was further augmented during the year. The leading case concerns the power to punish for contempt of court. A New Jersey vice-chancellor held that "falsely, deceptively, and perjuriously" testifying before a special master constituted contempt beyond the control of the legislature.[30] The court was faced with two principal arguments by the defendant. He alleged that, first, having recanted, he had removed all obstructions to justice and therefore was not guilty of the offense; and second, that by an act of 1917, the legislature limited criminal contempt to "misbehavior of any person in the actual presence of the court." After expressing his indignation at the flagrancy and number of contemptuous acts committed, the vice-chancellor met the first argument with the citation of federal and state cases holding that recanting does not relieve one of guilt of perjury.[31] Federal cases holding the contrary with respect to contempt were distinguished on the dubious ground that they involved contempts before lower federal courts, creatures of statute, where contempt proceedings were statutory in nature. The opinion then goes on to argue at consider-

[29] *In re* Brereton's Estate, 355 Pa. 45, 48A. (2nd) 868 (Sept., 1946). Other special courts involved in cases decided this year include the Louisiana juvenile courts, which were found to have exclusive jurisdiction over non-support cases even though criminal, State v. Kiffe, 28 So. (2nd) 459 (Nov., 1946), over which the Supreme court has appellate jurisdiction only on questions of law, State v. Smith, 210 La. 581, 27 So. (2nd) 359 (June, 1946).

[30] *In re* Caruba, 51 A. (2nd) 446 (N.J. Ch., Jan., 1947).

[31] See U.S. v. Norris, 300 U.S. 564, 57 S. Ct. 535 (1937).

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able length that vice-chancellors, masters, and other officers of the court in New Jersey are constitutional officers. The mere fact that they were unmentioned in the constitution of 1776 and the present constitution of 1844, and that the legislature granted the power to appoint such officers by statute in 1871 and 1941, is of no importance. Provisions of these constitutions which continue the powers and jurisdiction of the chancery court unchanged permit tracing this power of appointment back to the Norman Conquest. It thus is itself an inherent power of a chancery court, and the appointees so selected are constitutional officers. Accordingly, the statute of 1917, which has been held to be unconstitutional in its application to the chancellor himself,[32] would be equally invalid if it were to be applied to exclude these acts committed before a master from the definition of contemptuous acts. However, the opinion points out, these are acts which could be construed as coming within the legislative restriction,[33] making the entire opinion concerning constitutionality gratuitous. At the same time, the court of errors and appeals held that the legislature could restrict the use of injunctions in labor disputes without violating the constitutional jurisdiction of equity to grant relief when not available at common law.[34] The chancery court had issued an injunction against mass picketing, threats, violence, and other coercive practices, holding that the statute was invalid. The higher court upheld the injunction because, in its opinion, it was not forbidden by the statute, which only forbade the enjoining of acts properly classified as legal under the constitution. Evidently the chancery court here looks on such statutes as "common enemies whose speedy extermination is specially committed to the courts . . . ."[35]

The legislative power over the state bar emerges again[36] in a decision of the Kentucky court on the subject of the unauthorized practice of law.[37]

[32] *In re* Bowers, 89 N.J. Eq. 307, 104 A. 196 (1918).

[33] Compare Reed v. City of Smyrna, 39 S.E. (2nd) 668 (Ga., Sept., 1946), holding that the appointment of a receiver in bankruptcy is not an inherent judicial power which may not be delegated elsewhere.

[34] Westinghouse Elec. Corp. v. Workers Local, 49 A. (2nd) 896 (N.J., Dec., 1946). See also State *ex rel.* McPike v. Hughes, 199 S.W. (2nd) 405 (Mo., Feb., 1947), holding that the writ of error may be abolished so long as the jurisdiction of the court is not affected. Contrariwise, if the statute provides no mode for trying a case over which the court has jurisdiction, the court will remedy the omission, Russell v. Cochrill, 199 S.W. (2nd) 584 (Ark., Feb., 1947).

[35] Mitchell, J., dissenting in State v. Denny, 21 N.E. 252 (Ind., 1899).

[36] See Jacobus Tenbroek and Howard J. Graham, "State Constitutional Law in 1943–44," in this REVIEW, Vol. 38, pp. 687–688 (1944).

[37] Hobson v. Ky. Trust Co., 303 Ky. 493, 197 S.W. (2nd) 454 (as extended on denial of rehearing Dec., 1946). The Wisconsin court expressed its unwillingness to assume the responsibility of supervising an integrated bar, *In re* Integration of the Bar, 25 N.W. (2nd) 500 (Dec., 1946), contrary to a former opinion, Integration of Bar Case, 244 Wis. 8, 11 N.W. (2nd) 604 (1943); and while the Montana court

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The defendants, several banks and trust companies, engaged in the usual solicitation of compensation for business in drawing up deeds, wills, trusts, documents, etc., in which they were made fiduciary agents. This was in violation of a rule of court which forbade such acts unless performed by a "natural person" who was a party to the document, and whose services had been furnished without compensation. The Integrated Bar Act of 1934 delegated the rule-making power to the court of appeals, but expressly forbade any rule denying any "person" the right to make a "deed, mortgage, or will, or any instrument to which he is a party."

The court might simply have held that the capacity of fiduciary agent was not that of a "party" within the meaning of the statute or the rule. But because of the larger questions argued, and because the lower court had held that the rule was invalid under this and another statute which provided that banks and trust companies should have the powers and privileges of natural persons, the court goes on to discuss the separation of powers and inherent judicial authority over the bar.

The rule-making power is no unconstitutional delegation of legislative authority to the judicial branch of government, for such a charge "denies the universally accepted doctrine that the making of rules of practice in courts, as well as out of courts, in matters pertaining to the rights of individuals under the law is inherently possessed by courts, and judges. . . ." Thus the Integrated Bar Act constitutes no delegation, but rather "interference" with judicial functions, and is to be disregarded. As for the statute giving banks and trust companies the rights of natural persons, that is disposed of by the questionable conclusion that it refers to the rights of natural persons who are not members of the bar.

The position of the legislature in the tripartite separation of powers was the subject of several decisions in the course of the year. The first concerned the matter of judicial control over elections to the state senate.[38] The constitution of New Hampshire provides that "the Senate shall be the final judges of the elections, returns, and qualifications of their own members. . . . " The court, in reviewing its own decisions, concludes that "this provision has previously been construed to mean exactly what it says and the court has heretofore declined to rule upon election contests after a member has been seated by the senate." Since the member involved in this case had been seated, this settled the case; but the court went on to discuss the recognized exceptions or qualifications to its refusal to act. The courts are justified in interfering where the senate has abused its

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refused to rule on the matter, it implied that legislation might be necessary. *In re* Unification of Bar, 175 P. (2nd) 773 (Jan., 1947).

[38] Petition of Dondero, 51 A. (2nd) 39 (N.H., Jan., 1947).

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power, where the candidate dies just before the election, where other parts of the constitution affecting qualifications for office are involved, or where election returns are challenged before the senate has acted. Evidently, the power to review such election contests depends solely on the timing and the allegations of the petition, so that no case is beyond judicial control.[39]

Another decision involved the power of the Texas senate to meet in a special session to confirm executive appointments.[40] The regular session of the legislature adjourned on June 5, 1945. In the senate resolution of adjournment was included a provision that it would re-convene in January to consider executive appointments needing confirmation. When the bill for printing the senate journal for this session was presented, payment was disallowed on the advice of the attorney-general that the senate was not constitutionally in session. The court, in agreeing with the attorney-general, pointed to the clauses of the constitution which provide for sessions of the legislature and leave to the governor the task of calling special sessions, as well as those limiting the compensation of members to the period when the "legislature" is in session. Much is made of the fact that this was the first attempt of the senate to meet in this fashion, although some forty-eight legislatures have met since the constitution of 1875 was adopted. The constitution is a limit on the legislature rather than a grant of power to it, but only with respect to the performance of legislative functions; and since confirmation of appointments is an executive function, it is to be strictly interpreted.

The chief justice dissented by pointing to a contradiction in the majority decision. In a well reasoned opinion, he argued that if confirmation of appointments is an executive function, then those provisions of the constitution referring to sessions of the "legislature" upon which the majority relied are inapplicable. This decision, he said, represented a reversal of the principle previously adopted by this court in the case of Ferguson v. Maddox,[41] which held that the legislature need not be in regular session to conduct impeachment proceedings.

The most noteworthy decision in this group involves the question of whether or not the judiciary may go behind the enrolled bill to determine the legality of the passage of a statute.[42] It was alleged that a gas tax

[39] Cf. Brown v. Elect. Bd., 170 P. (2nd) 200 (Okla., May, 1946).

[40] Walker v. Baker, 196 S.W. (2nd) 324 (Tex., July, 1946).

[41] 114 Tex. 85, 263 S.W. 888 (1924). The Alabama court held that a 1946 constitutional amendment providing for a ten-day session of the legislature limited to organizational activities was not violated by the creation of interim committees. *In re* Opinion of Justices, 29 So. (2nd) 10 (Jan., 1947).

[42] Carlton v. Grimes, 23 N.W. (2nd) 883 (Iowa, July, 1946). The allegation concerned the change made in the title of an act after its passage.

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statute had been changed after the last vote in both houses of the legislature, and then signed by the presiding officers and the governor. The court first considered the details of passage as revealed in the legislative journals. The only constitutional procedural requirement is that each house keep a journal and record the final vote; this, it was held, means that the only authenticated record is the enrolled bill itself. The court then surveys cases on the question and concludes that the decisions can be classified into three groups: (1) the common law, federal, English, and most common rule, that the enrolled bill, if valid on its face, is conclusive evidence of its contents and passage; (2) those cases which hold journal evidence may be used to show non-compliance with some constitutional requirement required to be shown in the journal; and (3) decisions maintaining that the enrolled bill is only *prima facie* evidence of its contents and passage. The court concludes that, although this statute could be upheld under any one of the three rules, and although the last rule had been the one followed in this state,[43] the time was ripe for announcing that from now on the enrolled bill would be accepted as conclusive.[44]

Administrative Officers and Powers. The separation theory furnishes the nexus for the determination of most constitutional questions in administrative law. This year is no exception in either the volume or variety of such cases.

A rather substantial number of states seem to be establishing administrative bodies whose jurisdictions are alternative to those of the regular constitutional courts, leaving it to the parties, or the circumstances, to determine the forum. The advantages in flexibility and efficiency are obvious, but courts seem reluctant to engage in this type of competition.[45] Thus the Louisiana court refused for technical reasons to rule on the question of constitutionality, but expressed doubts on a statute giving a political party committee power to determine the party nominee in case of a contest "if, for any reason, any contest filed in court shall not be finally decided in the district court in time to print the name of the nominee of the party upon the ballot . . . ."[46] And in Arkansas, when the court upheld the constitutionality of the workmen's compensation com-

[43] Smith v. Thompson, 219 Iowa 888, 258 N.W. 190 (1935)

[44] One case that could probably be included here is Heck v. Schupp, *infra*, note 141.

[45] Seemingly it depends in part on the venerability of the function. The Tennessee court speaks approvingly of the "legislative" power of county courts in enacting zoning regulations, Davidson Co. v. Rogers, 198 S.W. (2nd) 812 (Jan., 1947). And see Appeal of Brown, 49 A. (2nd) 618 (Pa. Super., Oct., 1946); Hammond v. Love, 49 A. (2nd) 75 (Md., Oct., 1946), holding that a judge acts as a court in reviewing election results.

[46] State *ex rel.* Landeche v. Brady, 28 So. (2nd) 291 (La., Dec., 1946).

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mission, it found that the natural result was to oust the courts of common law jurisdiction in damage suits.[47]

The courts refused to uphold concurrent jurisdiction of the Virginia beer commissioner with certain courts of record to revoke or suspend liquor licenses, thereby reversing prior cases which held that non-judicial powers could be conferred on courts.[48] Presumably, however, the power to change the location in which a criminal sentence is to be served can be exercised concurrently by an administrative body or a court, because it is not inherently a judicial function.[49]

Relatively few of these cases involved title to office. The clerk of the Michigan circuit court commissioner was held not to be a purely judicial officer, so that civil service rules may be applied to him without encroaching on the judiciary.[50] The same court found, over the dissent of two members, that the register of deeds was entitled to salary for the period of his navy service, even though he had waived it at the time.[51] The court based its decision on the fact that the salary belongs to the office by statute, and is not contractual, and that during his absence he and his bondsmen were legally responsible for the performance of official duties by subordinates. The dissent cites cases from other jurisdictions finding this claim to be against public policy. The Georgia supreme court found that the legislature could add to the qualifications of members of county boards of education provided for in the constitution.[52] The fact that the statutes were enacted before the constitution of 1945 went into operation did not repeal by implication the statutory requirement that not more than one member could be from the same militia district.

The courts of Colorado and Florida were called upon to defend the constitutionality of their civil service systems against almost every conceivable constitutional charge. Since neither constitution has unusual features in this regard, and since there is now a substantial body of precedent holding that such laws do not constitute an improper delegation of

[47] Hagger v. Wortz Biscuit Co., 196 S.W. (2nd) 1 (Ark., July, 1946).

[48] State v. Huber, 40 S.E. (2nd) 11 (Va., Oct., 1946). In Dane Co. v. Barrow Co., 26 N.W. (2nd) 249 (Wis., Feb., 1947), the court upheld an administrative determination of inter-county liability, questioned in Town of Holland v. Village of Cedar Grove, 230 Wis. 177, 282 N.W. 111 (1939) because the statute had been amended to abolish an alternative judicial remedy.

[49] State *ex rel.* Reed v. Howard, 69 N.E. (2nd) 172 (Ind., Oct., 1946) and State *ex rel.* Dane v. Gerber, 70 N.E. (2nd) 111 (Ohio App., Oct., 1946) held that a statute conferring the authority to determine the cause of accidental deaths with finality in the coroner was an improper delegation of judicial power.

[50] Duncan v. Wayne Co., 25 N.W. (2nd) 605 (Mich., Jan., 1947).

[51] McQuaid v. Bd. of Co. Aud., 315 Mich. 234, 23 N.W. (2nd) 644 (June, 1946).

[52] McCollum v. Bass, 40 S.E. (2nd) 650 (Ga., Nov., 1946).

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legislative powers, denial of equal protection, etc., there was no particularly noteworthy feature in these decisions.[53]

The power of removal was discussed in a Pennsylvania case.[54] The Philadelphia Housing Authority, created by statute, is composed of five members—two appointed by the mayor, two by the city controller, and the fifth by the other four, each for a five-year term. The statute makes no provision for removal, but the controller removed one member. Since the constitution provides that "appointed officers . . . may be removed at the pleasure of the power by which they shall have been appointed," and since the member involved was the one selected by the other four, the controller was held to lack authority to remove him. This represents a reversal of the previous holding that such an officer was removable.[55] A somewhat unique variation of the removal power arose in Georgia under the new constitution. A grand jury attempted to replace a county board of education member who had been appointed under the old constitution. It was held that his term of office had not been ended by the adoption of the new constitution, even though by it such boards were given constitutional status for the first time.[56]

There is a provision found in most state constitutions that forbids any change in compensation of an officer during his term of office. Such a prohibition is likely to become irksome whenever salaries of public officials must be altered because of fluctuation in the cost of living. Four states provided for such salary raises without specifying the time at which the increased rate should become effective. The West Virginia court held that the fact that the prohibition of salary increases is found in both the executive and legislative articles does not permit the legislature to raise the salaries of incumbent judges if the scope of their duties has not been enlarged to include essentially new duties.[57] In Idaho, where the salary increase concerned supreme court justices and district court judges, the court reached the opposite conclusion, holding that the fact that the prohibition was found elsewhere in the constitution, and not in the section concerned with judicial salaries, did not imply a lack of authority.[58] In Colorado, it was found that this restriction applied to the officer, not the

[53] Shad v. De Witt, 27 So. (2nd) 517 (Fla., Oct., 1946); Vivian v. Bloom, 177 P. (2nd) 541 (Colo., Jan., 1947).

[54] Commonwealth *ex rel.* Reinhardt v. Randall, 51 A. (2nd) 751 (Pa., Mar. 1947).

[55] Commonwealth *ex rel.* Kelly v. Sheridan, 331 Pa. 413, 200 A. 102 (1938).

[56] Powell v. Price, 41 S.E. (2nd) 539 (Ga., Feb., 1947).

[57] Harbert v. Co. Ct., 39 S.E. (2nd) 177 (W. Va., May, 1946); Henritze v. Co Ct., 39 S.E. (2nd) 194 (W. Va., May, 1946). Compare Springer v. Bd. of Ed., 117 W. Va. 413, 185 S.E. 692 (1936).

[58] Higer v. Hansen, 170 P. (2nd) 411 (Idaho, June, 1946).

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office, so that an officer appointed to fill out a term could receive the larger salary denied his predecessor.[59]

The most ingenious effort to evade this restriction took place in Washington. There the legislature created a commission of seven members on interstate coöperation, at salaries of $6,000. It was provided that the governor might appoint any persons to these positions, but that if he appointed state officers, they should receive only the difference between their regular salaries and $6,000, and should be subject to different removal privileges. The legislature then appropriated barely enough money to cover the salary differences for the seven elected state officers whose salaries were less than $6,000. From this evidence, the court concluded that the intent of the legislature had been to raise salaries of incumbents rather than to create the commission, and declared the act invalid.[60]

As an outgrowth of the wartime liquor shortage, an attack was made on the rationing authority of the South Carolina tax commission.[61] By a 1945 law, the commission was given rule-making authority "to effect an equitable distribution of alcoholic liquors in this State." The court upheld this delegation on the ground that the quoted phrase constituted an adequate standard, and because of the necessity of constantly revising the regulations was beyond the capacity of the legislature. At the same time, the Pennsylvania statute which provided that violation of certain enumerated provisions would give the liquor control board authority to suspend or revoke the license was challenged as being in violation of the separation clause, in that no standards were provided for determining which penalty should apply.[62] The court refused to accept this reasoning, noting that "it was not only impractical, but almost impossible, for the legislature to anticipate all the various situations that might arise in citation cases and provide therefor by specific standards or to classify them." The Minnesota court went one step further, upholding the statute creating the Twin Cities Airport Commission against a charge of delegation of unlimited legislative power primarily on the ground that those who attacked

[59] Lancaster v. Bd. of Commrs., 171 P. (2nd) 987 (Colo., Aug., 1946). See also French v. Jordan, 172 P. (2nd) 46 (Cal., Aug., 1946).

[60] State *ex rel.* Troy v. Yelle, 176 P. (2nd) 459 (Wash., Jan., 1947). The governor appointed the officers who seemed to be called for by the act. A minority of three justices dissented on the ground that this commission had important duties and that the presumption of validity attached to all legislation should sustain it. See also State *ex rel.* Livingston v. Ayer, 23 Wash. (2nd) 578, 161 P. (2nd) 429 (1945).

[61] Davis v. Query, 39 S.E. (2nd) 117 (S.C., July, 1946). One justice dissented, maintaining that no limit had been provided.

[62] Appeal of Weinstein, 159 Pa. Super. 437, 48A. (2nd) 1 (July, 1946). In Case v. Liquor Comm., 314 Mich. 632, 23 N.W. (2nd) 109 (June, 1946), the licensing function was termed ministerial rather than legislative. See also Dicken v. State Bd. of Ed., 199 S.W. (2nd) 977 (Ky., Feb., 1947).

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the statute had failed to show how it might have been more precise in its terms.[63]

In Kentucky, the state public service commission denied an application for a certificate of necessity and convenience from a natural gas company which failed to furnish evidence of financial competence and other data required.[64] The certificate is required of any company which desires to bid for local-government franchises. Although the statute provided for a hearing and gave the commission power to refuse the certificate, the court of appeals held that certificates must be issued when the applicant desires to enter such a bid. The power to rule on the qualifications of bidders was said to belong to the local governments involved, even though they were in a poor position to exercise it intelligently. This seems to be true because the constitution authorizes local governments to award the franchise to the "lowest and best bidder," which implies the power to judge these qualifications.

The extent of judicial review over the rule-making power of the California employment stabilization commission was discussed in a decision involving the liability of a horse owner for unemployment insurance taxes on amounts paid his jockeys.[65] By the rules of the commission, such payments were due; but the court reasoned that the question of whether jockeys were in "employment" with the meaning of the statute was purely a judicial one, to be determined by the reviewing court without reference to the administrative proceeding prior to the issuance of either the rule or the order.

Administrative procedure under the guarantees of due process of law came in for only minor notice. The courts show a definite tendency to relax the formal rules of procedure whenever in their opinion substantial justice has been done.[66] Thus the failure of a health board to post its rules[67] and the somewhat summary suspension of a physician from a municipal

[63] State *ex rel.* Int. Air Ports Inc. v. Comm., 25 N.W. (2nd) 718 (Minn., Jan., 1947). The court also based its decision on the fact that the commission was a municipal corporation in respect to which the strict limits on delegations of legislative power have traditionally been relaxed.

[64] Public Service Comm. v. Blue Grass Nat. Gas Co., 197 S.W. (2nd) 765 (Ky., Nov., 1946).

[65] Isenberg v. Cal. Empl. Stab. Comm., 172 P. (2nd) 527 (Cal. App. Sept., 1946). See also, Champlin Ref. Co. v. Cruse, 173 P. (2nd) 213 (Colo., Sept., 1946).

[66] In Calif. Co. v. State Oil & Gas Bd., 28 So. (2nd) 120 (Miss., Nov., 1946), the court refused to prescribe a code of administrative procedure for a board whose determination it had reversed. This, it was said, was a request for an advisory opinion. But in Mass. Bonding & Ins. Co. v. Ind. Comm., 170 P. (2nd) 36 (Cal. App., June, 1946) the court remanded a case with careful instructions on the subject of cross-examination.

[67] Meredith v. State Bd. of Health, 48 A. (2nd) 489 (N.H., June, 1946).

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hospital[68] were excused when the record demonstrated to the satisfaction of the reviewing court that the respondents had constructive notice and an opportunity to defend themselves. In part, these decisions were based also on the recognized need for summary administrative action in matters affecting public health.[69] And the Michigan court refused to annul an administrative liquor license revocation based in part on hearsay evidence because there was still considerable evidence to support the administrative decision.[70] The only such case where administrative procedure was found to violate due process involved an administrative rule which established a conclusive presumption of guilt against a horse-trainer whose horses were found to have been drugged.[71] The rule provided that this would constitute a conclusive presumption "either that there was knowledge of the fact on the part of the trainer, or that he was guilty of carelessness," either of which was sufficient ground for license revocation. The court said that the enforcement of such a rule would deny respondent the right to introduce evidence of surrounding circumstances which might show a lack of responsibility for such doping. Much was made both of the lack of any other rule compelling trainers to guard their horses and of evidence introduced in the court that as a rule trainers do not take such precautions. This case is probably best explained as an example of judicial resistance to conclusive presumptions, rather than with reference to the merits, since horse-racing is seldom regarded as involving property rights worthy of strict judicial protection.

The major issue in administrative adjudication still revolves around the respective rôles of the courts *vis à vis* administrative agencies. These problems concern the power to fix the penalty for a violation of the statute, the timing of judicial review, and the extent of such review. With respect to the power to fix penalties, there are two important liquor license cases. The California court was called on to review the enforcement of the constitutional provision that liquor may be consumed only in bona fide restaurants, hotels, and eating places.[72] The state board of equalization, after hearing, had refused to revoke the license of a café, holding that the evidence established the licensee as eligible to retain his license. The lower court, after a trial *de novo*, ordered the license revoked. The supreme court reviewed its own prior decisions,[73] which it maintained went to

[68] Bryant v. Lakeland, 28 So. (2nd) 106 (Fla., Nov., 1946).

[69] The same rule applies in matters of taxation. Smith v. Robertson, 41S.E. (2nd) 631 (S.C., Feb., 1947).

[70] Case v. Liquor Cont. Comm., 314 Mich. 632, 23 N.W. (2nd) 109 (June, 1946).

[71] Mahoney v. Byers, 48 A. (2nd) 600 (Md., July, 1946).

[72] Covert v. State Bd. of Equal., 173 P. (2nd) 545 (Cal., Oct., 1946).

[73] Evidently this court is still changing its mind about the extent of review permitted on mandamus. Compare Laisne v. State Bd. of Optom., 19 Cal. (2nd)

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permit reversals of the board only for an error of law or excess of jurisdiction, and permitted the lower court to remand a case to the board for correction, rather than to allow the court to substitute its order of revocation for the board's decision. In a companion case,[74] the lower court revoked a license that the board had only ordered suspended. The supreme court held that the question of whether the license should be suspended or revoked was for the board rather than for the court.

There is some slight evidence that the federal rule against review of interlocutory administrative orders is having an influence on state courts.[75] But no general trend can as yet be observed.

The extent of judicial review of administrative decisions generally involves distinctions between questions of fact and law, and between administrative findings supported by "substantial" evidence *versus* those not so supported. While these distinctions are relatively widely accepted as verbal formulas, their content varies with specific decisions.[76] The New York industrial commissioner's levy of a fine against an employer who had failed to file payroll reports, for example, was reversed by the supreme court because it was an error of law, and was upheld by the court of appeals because the error, if it existed at all, was one of fact.[77] The question in both decisions was simply whether the employer was prevented by the manpower shortage, and other factors beyond his control, from filing the reports on time.

The Texas supreme court, after several years of vacillation, this year adopted the general rule that administrative acts, if supported by substantial evidence, will be upheld.[78] The court reversed its own prior decisions, which had at times held that additional evidence could be introduced at the judicial stage, and that the court had the obligation of determining all questions for itself. The chief justice dissented, in part on the ground that in this case the decision afforded a degree of finality to

831, 123 P. (2nd) 457 (1942) with Supper v. Urban, 22 Cal. (2nd) 138, 137 P. (2nd) 425 (1944) and Murphy v. Bd. of Med. Exam., 170 P. (2nd) 510 (Cal. App., June, 1946). See Foster H. Sherwood, "Mandamus to Review State Administrative Action," *Mich. Law Rev.*, Vol. 45, p. 123 (1946).

[74] Reynolds v. State Bd. of Equal., 173 P. (2nd) 551 (Cal., Oct., 1946).

[75] The only appropriate case is Womesdorf Cons. Water Co. v. Comm., 50 A. (2nd) 548 (Pa. Super., Jan., 1947), which traces the reversal of Williamsport v. Cit. Heat. & Gas Co., 232 Pa. 232, 81 A. 316 (1911). For the federal rule, see Okla. Press Publ. Co. v. Walling, 327 U.S. 186, 66 S. Ct. 494 (1946).

[76] Ray A. Brown, "Fact and Law in Judicial Review," *Harvard Law Rev.*, Vol. 56, p. 899 (1946); E. Blythe Stasson, " 'Substantial Evidence' in Administrative Law," *Univ. of Pa. Law Rev.*, Vol. 89, p. 1026 (1941). In Heath v. Baltimore, 49 A. (2nd) 799 (Md., Nov., 1946), the power to review administrative acts was termed "inherently judicial."

[77] *In re* Rumsey Mfg. Co., 71 N.E. (2nd) 426 (N.Y., Jan., 1947).

[78] Trapp v. Shell Oil Co., 198 S.W. (2nd) 424 (Tex., on rehearing, Nov., 1946).

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administrative acts affecting property rights which belongs only to the judicial power.

The Missouri Administrative Review Act, modeled after the new federal law, provided that administrative acts must be upheld unless they are "not supported by competent and substantial evidence upon the whole record." This was said to constitute a broadening of judicial review in that the court may inquire into the "reasonableness" of all the administrator's conclusions except those based on the credibility of witnesses.[79] Therefore, a conclusion of the compensation commission that a claimant was eligible only for temporary compensation because his injury could be cured by an operation which he had unreasonably refused, was reversed; and an award for permanent disability compensation was directed when the court concluded that the claimant's refusal was not unreasonable. At the other extreme, the Mississippi court treated a statute giving the circuit court the responsibility of trying *de novo* orders of the state oil and gas board as conferring only jurisdiction to inquire into the judicial aspects of the decision or rule.[80] Presumably there is agreement here with the South Dakota decision which points out that a statute giving the court power to substitute, *in toto*, its decision for the administrative act or rule means that the court performs non-judicial functions, or alternatively, that the administrative body acts judicially, either of which would be invalid.[81]

Local Government. The best examples of the dilemma with which we are faced in dealing with the complex problems of overlapping areas of local government are usually found in the field of finance. This year, only one outstanding constitutional law decision appears. The constitution imposed a property tax limit of one and one-half per cent on municipalities, which could be increased under certain circumstances if a municipal charter so provided. A part of a municipality was contained within the limits of a school district. The aggregate taxes paid by property owners in both areas was above the constitutional maximum for the municipality. If the court upheld the tax, it would place itself in the position of encouraging the creation of special-purpose districts. If the tax was held invalid, it would be going counter to home rule sentiment. The court chose the former alternative, even in the face of evidence that the tax levied by the school district was greater in the area that lay within the city limits than in that outside municipal boundaries.[82]

[79] Wood v. Wagner Elec. Corp., 197 S.W. (2nd) 647 (Mo., Nov., 1946).

[80] Cal. Co. v. State Oil & Gas Bd., 27 So. (2nd) 42 (Miss., Oct., 1946).

[81] Holmes v. Miller, 23 N.W. (2nd) 794 (S.D., July, 1946). Compare Covert v. State Bd. of Equal., *supra*, note 72, and Reynolds v. State Bd. of Equal., *supra*, note 74.

[82] Thomas v. City of Lansing, 315 Mich. 566, 23 N.W. (2nd) 213 (Sept., 1946).

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The courts, however, continue to maintain a rather close watch over local finance to insure that the services provided are essential, and that the method of financing neither unduly burdens the private citizen nor improperly pledges his resources. The North Carolina court annulled a city ordinance levying a tax, by holding that park and recreational purposes were not "necessary" expenses of a city, and that a tax levied therefore must be approved by a vote of a majority of the qualified voters, as is provided in such cases by the state constitution.[83] Yet where financing is accomplished through the issuance of bonds, such limits do not apply as long as such bonds constitute no debt of the municipality, but are the obligation of a revenue-producing undertaking. Nor do they violate the constitutional restrictions on the municipality's debt.[84] Further, where a state statute provided that such bonds previously issued were to become a lien on the municipality, it was held that this was an action analogous to granting extra compensation to a contractor after the contract has been made, and thus contrary to the state constitution.[85] Similarly, the Florida supreme court declared, such bonds may be issued without an election, where it is provided that the taxing power should never be resorted to for their payment.[86] The California district court of appeals declared that any defects in the procedural steps leading to the incurring of bonded indebtedness by municipal corporations and other subdivisions may be cured by subsequent validating statutes passed by the legislature.[87]

The Kentucky court of appeals held that a county had to make good its obligation on warrants, even if they were issued for other than governmental purposes in violation of the constitution, unless it could prove that the obligation when first created exceeded the revenues.[88] Similarly, the Missouri supreme court ruled that a teacher's statutory reëmployment contract could not be broken, on the ground that it violated a constitutional provision that the expenses of a school district must not exceed its revenues without a vote of the people, since this obligation under the contract preceded the annual financial outlay of the school board.[89]

Compare Butler v. Compton Jun. Coll. Dist., 176 P. (2nd) 417 (Cal. App. Jan., 1947), where the court upheld a contract between school districts against the contention that, as it affected the apportionment of state school funds, it constituted an invalid gift of state money.

[83] Purser v. Ledbetter, 40 S.E. (2nd) 702 (N.C., Dec., 1946), reversing Atkins v. City of Durham, 210 N.C. 295, 186 S.E. 330 (1936).

[84] Veail v. Louisville, etc., Dist., 197 S.W. (2nd) 413 (Ky., Nov., 1946); Reed v. City of Smyrna, 39 S.E. (2nd) 668. (Ga., Sept., 1946).

[85] Harbold v. City of Reading, 49 A. (2nd) 817 (Pa., Nov., 1946).

[86] State v. City of Miami, 27 So. (2nd) 118 (Fla., July, 1946).

[87] City of Pacific Grove v. Irwin, 172 P. (2nd) 357 (Cal. App., Sept., 1946)

[88] Fiscal Ct. of Magoffin Co. v. Gardner, 196 S.W. (2nd) 597 (Ky., Sept., 1946).

[89] Dye v. School Dist. of Pulaski Co., 195 S.W. (2nd) 874 (Mo., July, 1946).

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According to a constitutional provision of Kansas, the state may participate financially in, and control the administration of, the county welfare programs. The state supreme court held that as a result the state board of local welfare can require the county board to revise its budget and levy adequate taxes to meet the specifications of the state board.[90]

The supreme court of Pennsylvania held that according to a statutory provision county treasurers in counties of the first class ceased to be agents of the state for the collection of taxes and fees, and that they did not have the right to retain the cost of their own surety bond, lest they violate a constitutional requirement that county officers must pay all county fees into the county treasuries.[91]

The trend seems to be to uphold statutes by the state legislatures providing for the organization of school districts. The Illinois supreme court remarked that the only limits on the legislature in this regard are that schools be free and that all children of the state be admitted equally.[92] The supreme court of Florida held that statutes providing for the consolidation of school districts should be so construed as to remove them from constitutional prohibitions in order that the school districts shall not become static.[93]

In the case of elective officers, the word "term" in constitutional provisions for a maximum number of terms has been construed strictly by the Kansas supreme court. The court held that any part of a two-year term constituted a full term.[94]

A statute, in so far as it attempted to broaden a class of employees of the county required by the constitution to be elected, and made them subject to the civil service board, was declared unconstitutional by the Georgia supreme court.[95]

Almost without exception, the courts have upheld special acts passed by state legislatures against the state constitutional requirement that general acts are required whenever possible. The supreme court of Tennessee declared, in relying on an earlier case,[96] that the legislature may enact a special act affecting one town or county in its political or governmental functions, only provided it is not contrary to the general law affect-

[90] State *ex rel.* Mitchell v. Townsend, 171 P. (2nd) 651 (Kan., July, 1946).

[91] *In re* Account of Harr, 50 A. (2nd) 295 (Pa., Jan., 1947).

[92] People *ex rel.* Tuohy v. School Dist., 71 N.E. (2nd) 86 (Ill., Jan., 1947). See also North Common School Dist. v. Live Oak Co., 199 S.W. (2nd) 764 (Tex., Nov., 1946), upholding a statute curing defects in a school district consolidation.

[93] Fowler v. Turner, 26 So. (2nd) 792 (Fla., June, 1946).

[94] Coates v. Camp, 173 P. (2nd) 266 (Kan., Sept., 1946).

[95] Civil Service Bd. of Fulton Co. v. MacNeill, 40 S.E. (2nd) 655 (Ga., Oct., 1946). Compare Sacramento Co. v. City of Sacramento, 171 P. (2nd) 477 (Cal., App., July, 1946).

[96] Town of McMinnville v. Curtis, 192 S.W. (2nd) 998 (Tenn., March, 1946).

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ing all counties or municipalities. This was the only case where such an act was held invalid for this reason.[97] The supreme court of Nevada declared all special acts in relation to the formation of municipal corporations and relating to their powers to be authorized by the state constitution.[98] The same court, in a later case, also said that the prohibition against the enactment of local or special laws applies only to laws regulating county business, and not merely relating to it.[99]

Where the population classification was made in good faith and was reasonably related to the purpose to be effected, and not merely arbitrary, acts passed as general laws were held valid, although at the time of their enactment they could apply to only one county or city. This rule was pronounced by the supreme courts of Alabama, Florida, and Minnesota and the court of appeals of Kentucky.[100] In fact, where an act applied only to one county and city, the Kentucky court of appeals declared that the express naming of the county and city, instead of describing them, was merely an inadvertence and was not sufficient to render an act unconstitutional.[101]

The principal limit on municipal police powers seems to be state laws. So long as the municipal ordinance does not conflict with statutes or policies of the state, it will be upheld.[102]

Political Processes. The legality of submitting referendum measures to the public was challenged in two cases. The Arizona constitution does not permit referenda on appropriation acts for the support and maintenance of departments of state government. Therefore an effort, in all other respects legal, to refer to the voters the question of whether a large sum of money should be appropriated to the corporation commission and the Federal Power Commission to ascertain the fair value of utilities in the state for rate-making purposes failed.[103] Since the appropriation act conferred no new duties on the commission, and since the commission was established as a department in the constitution, the voters had no authority to pass on the statute directly.

The other case concerned a bonus act passed by the Illinois legislature which was required by the constitution to have popular approval of the

[97] Southern v. Beeler, 195 S.W. (2nd) 857 (Tenn., June, 1946).

[98] Western Realty Co. v. City of Reno, 172 P. (2nd) 158 (Nev., July, 1946).

[99] Cauble v. Beemer, 177 P. (2nd) 677 (Nev., Feb., 1947).

[100] State *ex rel.* Rountree v. Sumner, 28 So. (2nd) 565 (Ala., Oct., 1946); State v. Dade Co., 27 So. (2nd) 283 (Fla., Aug., 1946); Somsen v. Sanit. Dist., 197 S.W. (2nd) 410 (Ky., Nov., 1946); Leighton v. City of Minneapolis, 25 N.W. (2nd) 263 (Minn., Dec., 1946).

[101] Veail v. Louisville, etc., Dist., 197 S.W. (2nd) 413 (Ky., Nov., 1946).

[102] Clark v. Alloway, 170 P. (2nd) 245 (Idaho, June, 1946).

[103] Garney v. Trew, 170 P. (2nd) 845 (Ariz., June, 1946).

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voters.[104] The act as passed called for a bond issue and certain tax law changes necessary to meet the resulting financial burden. The legality of the referendum was challenged on several grounds, the most important of which were that the measure was in fact two measures, an appropriation and also a tax law; that only the appropriation need be submitted for popular approval; and that the tax law as passed would not be subject to change or repeal, contrary to the principle that no legislature can commit its successors, although the voters were not so informed by the ballot. The court upheld the measure by pointing out that the constitution requires that debt measures be accompanied by tax measures, and that the only irrepealable feature of the law concerned the obligation to meet the interest on the bonds. The ballot summary of the measure was a complete and accurate summary, in the opinion of the court, so that the voters were not deceived.

Several cases concerned the number of signatures necessary to secure the placement of an initiative measure on the ballot, or the number of votes necessary to carry an initiative measure. The usual provision calls for a minimum fraction of the number of votes cast at the last general election, or in some cases, for a fraction of the total number of persons eligible to vote. The Florida court held that where the measure must have been voted on by at least fifty per cent of those eligible to vote, the reference was to those eligible to vote on the day of the election, and not to those eligible to vote when the registration lists were last closed.[105] The Washington court found that where the constitution requires the total vote cast to be a fraction of the vote cast "in the last preceding general election," the legislature may make the condition more onerous by specifying that the election must be a "state" general election.[106] Similarly, it was held in Oklahoma that an initiative petition which must have signatures equal to fifteen per cent of the votes cast at the last general election, the reference was to the presidential election of 1944 and not the state general election of 1942.[107] In another case, the court refused to permit a vote on an initiative measure where the constitution provides a thirty-day period for correction or amendment of an initiative petition found deficient by the secretary of state. The court said that this did not mean that the proponents would have the thirty-day period to increase the number of signatures to a petition which they knew was inadequate when submitted.[108]

[104] Routt v. Barrett, 71 N.E. (2nd) 660 (Ill., Jan., 1947).

[105] Homer v. State *ex rel.* Stewart, 28 So. (2nd) 586 (Fla., Jan., 1947).

[106] Union High School Dist. v. Taxpayers, 172 P. (2nd) 591 (Wash., Sept., 1946).

[107] *In re* Initiative Petition #224, 172 P. (2nd) 324 (Okla., Aug., 1946).

[108] Dixon v. Hall, 198 S.W. (2nd) 1002 (Ark., Sept., 1946). The petition had 3,664 signatures when 21,685 were required.

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Two initiative measures regulating labor unions were prepared for submission to the voters of Massachusetts. One prohibited labor union activity or contributions in political campaigns, and the other required financial reports by labor unions. The A. F. of L. attacked both measures and sought to prevent them from being submitted to the voters.[109] The court held that, although normally it had no power to prevent the enactment of unconstitutional legislation, in the case of initiative measures the rule was different. The constitution forbids submission to the voters of initiative measures which violate certain fundamental rights, and since the thing forbidden is the submittal, the courts may act. It was held that the measure regulating union political activity was a clear violation of the basic rights of freedom of speech, press, and assembly; the second measure, requiring financial reports, was constitutional or at least sufficiently so to permit a popular vote on it. The same result was reached by the Michigan court without benefit of a special constitutional provision preventing submission of unconstitutional measures to the voters.[110] There, the court distinguished previous decisions holding that it could not prevent an unconstitutional enactment, and decided that an initiative measure which was not submitted in full to those who signed the petitions, which did not contain a title, and which concerned a subject beyond the power of the legislature, could be enjoined. These inadequacies, it was said, were analogous to procedural defects such as insufficient signatures to a petition, where the power of the courts to act is well recognized.

II. CIVIL RIGHTS

Freedom of Speech, Press, and Assembly. Although local licensing and regulatory statutes are still frequently challenged as violating the constitutional guarantees of free expression, there are relatively few such laws that are so found. This year only one statute was held unconstitutional on this ground. The laws approved as being legitimate regulations include an ordinance declaring the operation of sound trucks on the public streets unlawful,[111] a statute limiting political advertising rates for press and radio to those regularly charged for commercial advertising,[112] and an ordinance imposing a license tax on local newspapers and magazines.[113]

[109] Bowe v. Secty. of Comm., 69 S.E. (2nd) 115 (Mass., Sept., 1946).

[110] Leininger v. Alger, 26 N.W. (2nd) 348 (Mich., Mar., 1947). See also Hawkins v. Birmingham, 29 So. (2nd) 281 (Ala., Jan., 1947).

[111] Kovacs v. Cooper, 50 A. (2nd) 451 (N.J., Dec., 1946).

[112] Chronicle & Gaz. Pub. Co. v. Attny. Gen., 48 A. (2nd) 478 (N.H., June, 1946). Similar laws have been passed in Minnesota, Mississippi, North Dakota, Texas, and Utah, but have not yet been challenged.

[113] Tampa Times Co. v. City of Tampa, 29 So. (2nd) 368 (Fla., Feb., 1947).

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The Massachusetts initiative measure referred to above[114] is the sole exception.

There were several other cases which concern the relation of the rights of labor to freedom of speech. The use of an injunction creates a previous restraint on publication, making the judge a censor, and violating this constitutional guarantee.[115] This is true even where the acts charged, if true, constitute libel; for "the protection so afforded is from state and federal court decrees as well as from state and federal legislative enactments." A court may, however, enjoin a boycott of non-union suppliers under a statute forbidding conspiracy in restraint of trade or competition, although peaceful picketing and persuasion may not be prohibited.[116] The New York court remarked that mass picketing was not so protected, because it was a form of coercion rather than of expression.[117]

Freedom of Religion. Illinois was the scene this year of two very important religious freedom cases. The supreme court was called on to review and annul regulations of two school districts permitting religious education of public school pupils. In one case, the Chicago board of education authorized the release of pupils to attend religious exercises provided by the church of their choice.[118] In the other, the Champaign board of education authorized pupils to participate in religious exercises provided under the supervision and at the expense of a voluntary religious group composed of Catholics, Protestants, and Jews.[119] In both cases, the written permission of parents was required before the pupil could be excused. In the first case, the court upheld the practice because no school facilities or public funds were used, or if they were, they were used in such small and uncertain amounts as to be negligible.[120] In the Champaign case, however, the exercises were held during school hours and on school grounds, so that the charge that this practice meant the support of religious institutions by the taxpayer was much more difficult to meet. The religious group paid for supplies, books, and teachers, but there was none the less a certain cost

[114] *Supra*, note 109. Compare Lockheed Aircraft Corp. v. Sup. Ct., 171 P. (2nd) 21 (Cal., June, 1946) on labor with Smith v. Higinbotham, 48 A. (2nd) 754 (Md., Sept., 1946) on bar associations.

[115] Montgomery Ward & Co. v. United Ret. Work., 70 N.E. (2nd) 75 (Ill. App., Nov., 1946).

[116] Rogers v. Poteet, 199 S.W. (2nd) 378 (Mo., Feb., 1947), following Lohse Pat. Door Co. v. Fulle, 215 Mo. 421, 114 S.W. 997 (1908).

[117] Schivera v. Long Island L. Co., 296 N.Y. 26, 69 N.E. (2nd) 233 (Oct., 1946). See also Westinghouse Elec. Corp. v. United Workers, 46 A. (2nd) 16 (Pa., July, 1946).

[118] People *ex rel.* Latimer v. Bd. of Ed., 394 Ill. 228, 68 N.E. (2nd) 305 (As modified on rehearing, Sept., 1946).

[119] People *ex rel.* McCollum v. Bd. of Ed., 71 N.E. (2nd) 161 (Ill., Jan., 1947).

[120] Following People *ex rel.* Lewis v. Cranes, 245 N.Y. 195, 156 N.E. 663 (1927); Harfst v. Hoegen, 349 Mo. 808, 163 S.W. (2nd) 609 (1942).

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to taxpayers. The court upheld the regulation by pointing to the broad discretion given to school boards over school buildings by state law, "to grant the temporary use of them, when not occupied by schools, for religious meetings and Sunday schools. . . . " Such discretion, the court said, had not been abused, since the curriculum prescribed by the board left fifty minutes per day otherwise unallocated. In both cases, much was made of the fact that the plan was purely voluntary with the pupils, and that other religious groups could be included in the plan at any time.[121] In the Champaign case, the court also pointed out that since the content of the courses was prescribed by the entire religious group, "it is apparent that the teaching was to be of the content of the Bible without interpretation or attempt at influencing belief in the doctrines or creeds of any church."[122] The voluntary feature seems to be an important one; for elsewhere, when a court sentenced a delinquent child to attend Sunday school, the higher court held this to be a violation of the guarantee of religious observance, and reversed the sentence.[123]

Qualifying the federal rule,[124] the California supreme court declared that a city ordinance requiring the registration of and issuance of permits to persons soliciting for charitable purposes on behalf of a religious organization could not be construed as limiting freedom of religion if collections are for other than missionary, evangelical, and other religious purposes. The court, citing from an earlier case,[125] states that when a person translates his belief into action he has to conform to reasonable regulations applicable to everyone and designed to accomplish permissible objects.[126]

Equal Protection of the Laws. The federal courts now indulge every presumption possible to sustain classification statutes.[127] This attitude is having its effect on state courts as legislatures demonstrate an increasing ingenuity in matters of business regulation and taxation. The general rule is that a statute classifying and according different treatment to different groups must be based on real, rather than artificial, differences, and must be for a legitimate purpose. The laws challenged on this ground which were upheld this year include a statute denying bartenders' licenses to women unless they are wives or daughters of a male owner of the estab-

[121] Distinguishing People *ex rel.* Ring v. Bd. of Ed., 245 Ill. 334, 92 N.E. 251 (1910).

[122] 71 N.E. (2nd) 161, 162. Compare Everson v. Bd. of Ed., 67 S. Ct. 504 (1947). See also Castigan v. Hall, 249 Wis. 94, 23 N.W. (2nd) 495 (June, 1946).

[123] Jones v. Comm, 185 Va. 335, 38 S.E. (2nd) 444 (June, 1946).

[124] Compare Cantwell v. Conn., 310 U.S. 296 60 S. Ct. 900 (1940).

[125] Gospel Army v. City of Los Angeles, 27 Cal. (2nd) 232, 163 P. (2nd) 704 (1945).

[126] Rescue Army v. Munic. Ct., 171 P. (2nd) 8 (Cal., June, 1946).

[127] See Madden v. Ky., 309 U.S. 83, 60 S. Ct. 406 (1940).

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lishment;[128] a law requiring courts to grant continuance in trials pending within ten days of the beginning of a legislative session, where the attorney requesting the delay is a member of the state legislature;[129] a regulation compelling railroad companies to furnish uniform caps without charge for employees engaged in the transportation of passengers or baggage;[130] a tax upon gross operating revenue of motor carriers for the use of the highways, which does not distinguish between the various sizes and weights of such vehicles;[131] authorization of a corporate physicians service, when the laws forbid the unlicensed sale of insurance and the corporate practice of medicine and surgery;[132] a pension act granting benefits to elected judges while denying them to appointive judges;[133] and a city ordinance requiring the fingerprinting and photographing of retail liquor establishment employees, but exempting employees of cafés and restaurants.[134] The most important of these cases, at least for the future, is a group of three decisions upholding restrictive covenants discriminating in the use or ownership of real property on racial grounds.[135] In one case, the court remarked that the constitutional clause, which reads, "all persons are created equal and are entitled to equal rights and opportunities under the law, not only sustains these decisions, but even strengthens them."[136]

Only four statutes were held invalid as establishing an unreasonable classification. An Illinois statute of 1945 which provided that "no person appointed in the classified civil service who is entitled to military preference . . . shall be removed or discharged because he misstated his age" was declared unconstitutional because, in part, it is "repugnant to basic morality."[137] An act giving to tenants, former owners, widows, or descendants of former owners the right to purchase state lands at a price fixed by a state board even when a higher bid has been made, was similarly declared contrary to public policy.[138] A local zoning ordinance which clas-

[128] Fitzpatrick v. Liquor Comm., 25 N.W. (2nd) 118 (Mich., Dec., 1946).

[129] Mora v. Ferguson, 199 S.W. (2nd) 759 (Tex., Feb., 1947). Similar laws are found in Arkansas, California, Illinois, Louisiana, Missouri, and Virginia. See State *ex rel.* Allison v. Barton, 197 S.W. (2nd) 667 (Mo., Nov., 1946).

[130] McQuade v. N.Y. C. R. Co., 68 N.E. (2nd) 185 (Mass., June, 1946), rejecting Woodward v. Pere Marquette R. Co., 312 Mich. 67, 19 N.W. (2nd) 489 (1945).

[131] Bd. of R. Comm. v. Aero. etc. Co., 172 P. (2nd) 452 (Mont., Sept., 1946).

[132] Cal. Phys. Serv. v. Garrison, 172 P. (2nd) 4 (Cal., Aug., 1946).

[133] Clark v. Towes, 49 A. (2nd) 463 (Md., Oct., 1946).

[134] Norman v. City of Las Vegas, 177 P. (2nd) 442 (Nev., Feb., 1947).

[135] Sepes v. McGhee, 25 N.W. (2nd) 638 (Mich., Feb., 1947); Kraemer v. Shelley, 198 S.W. (2nd) 679 (Mo., Dec., 1946); Matthews v. First Christ. Church, 197 S.W. (2nd) 617 (Mo., Oct., 1946); Perkins v. Trustees, 70 N.E. (2nd) 487 (Ohio App., Oct., 1946).

[136] Kraemer v. Shelley, *supra*, at p. 682.

[137] People *ex rel.* Hendrick v. Allman, 71 N.E. (2nd) 44 (Ill., Jan., 1947).

[138] Herr v. Rudolph, 25 N.W. (2nd) 916 (N.D., Jan., 1947).

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sified residential property as available for church schools, but not for nonsectarian schools, bore "no substantial relation to the public health, public morals, the public safety, or the general welfare in their proper sense," and was therefore invalid.[139] Finally, a Florida statute, constitutional when passed, which forbade possession, purchase, sale, or transportation of fresh or salted mullet or mullet roe, was rendered unconstitutional when the legislature amended the statute in 1941 to exempt residents of some counties in the state.[140]

Police Power. As with the equal protection cases, so with those decisions concerned with the limits of the states' police powers, it is somewhat more unusual to find decisions holding regulatory statutes and ordinances invalid as contrary to state policy than to find them upheld. In fact, in one case, a court actually held that the repeal of a punitive statute was invalid.[141] The statute attempted to abolish the right to file damage suits based on alienation of affections or breach of promise to marry. The court held this contrary to public policy and a violation of the "moral law," and therefore invalid. A St. Louis ordinance requiring licenses for coal dealers was held invalid, though largely because the city failed to present its case well.[142] But in Virginia, the courts followed the decisions of other states holding that the public welfare is not served in any way by licensing photographers.[143] Similarly, a zoning ordinance which prevented the establishment of manufacturing plants in an industrial area was declared beyond the police power when the court saw evidence in the council's proceedings to justify its conclusion that the purpose the council had in mind was not promoted by the means used.[144] The criterion of purpose was used also to invalidate an oleomargarine license tax. Since the tax receipts were allocated by the statute solely for enforcement of the act, and since they produced revenue in substantially greater amounts than were needed, the license fees were declared invalid as imposed on wholesale and retail dealers in oleomargarine.[145]

The long struggle in Kentucky, dating from 1906, to separate the in-

[139] Lumpkin v. Twsp. Comm., 48 A. (2nd) 798, 799 (N.J., Sept., 1946).

[140] Caldwell v. Mann, 26 So. (2nd) 788 (Fla., June, 1946).

[141] Heck v. Schupp, 394 Ill. 296, 68 N.E. (2nd) 464 (May, 1946).

[142] State *ex rel.* Triangle Fuel Co. v. Caulfield, 196 S.W. (2nd) 296 (Mo., July, 1946).

[143] Moore v. Sutton, 185 Va. 481, 39 S.E. (2nd) 348 (Sept., 1946), following State v. Cromwell, 72 N.D. 565, 9 N.W. (2nd) 914 (1943). Similar statutes have been held invalid in Arizona, Georgia, Hawaii, and Tennessee. *Contra*, State v. Lawrence, 213 N.C. 674, 197 S.E. 586 (1938). See Jacobus Tenbroek and Howard J. Graham, "State Constitutional Law in 1945–46," in this REVIEW, Vol. 40, p. 722 ff. (1946).

[144] 2700 Irving Pk. Bldg. Corp. v. Chicago, 395 Ill. 138, 69 N.E. (2nd) 827 (Nov., 1946).

[145] Flynn v. Horst, 51 A. (2nd) 54 (Pa., Jan., 1947).

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surance business from undertaking received another setback. A 1944 statute which declared burial insurance contracts designating undertakers by name an unreasonable restraint of trade and contrary to public policy was found to be in violation of the natural freedom of contract.[146] One may suspect that again this result was in part due to the failure of the state to present the strongest possible case. A much weaker argument may be successful, however, when there is a long background of regulation of the business involved, such as is true with wrestling matches,[147] motor vehicles[148] and public carriers,[149] and the professions.[150]

Due Process in Criminal Proceedings. A person arrested for other than a capital offense must be given ample opportunity to offer bail and be released as soon as possible. The Mississippi supreme court held that the sheriff should be able to accept bail when he makes an arrest not based upon an affidavit or a warrant, in the absence of the justice of the peace.[151] The supreme court of Florida ruled that the legality of an indictment or information may not be challenged by a plea in abatement or a motion to quash which alleges that the indictment is based on insufficient evidence to warrant action of the grand jury in returning it.[152] The Missouri constitution provides that a charge may be made either by indictment or information. The court ruled that if the indictment is quashed for an unimportant reason, it is not a nullity and information may be properly substituted.[153] An indictment must be specific and take into account implied meanings of the statute making the act charged a misdemeanor or crime.[154]

The Nebraska supreme court held that there was no constitutional or statutory provision requiring a court to provide or impose counsel upon a defendant in a misdemeanor case.[155] Where the defendant is represented by able counsel, he cannot claim denial of due process because counsel failed to file a motion for a new trial; the supreme court of Mississippi held

[146] Kenton, etc., Assoc. v. Goodpaster, 200 S.W. (2nd) 120 (Ky., Dec., 1946). The history of previous efforts is reviewed in the opinion.

[147] Ward v. Drennon, 40 S.E. (2nd) 549 (Ga., Oct., 1946).

[148] Ragland v. Wallace, 70 N.E. (2nd) 118 (Ohio App., Oct., 1946).

[149] State v. Chicago & N.W. Ry. Co., 25 N.W. (2nd) 824 (Neb., Jan., 1947).

[150] Taber v. State Bd., 51 A. (2nd) 250 (N.J., Feb., 1947).

[151] Sheffield v. Reece, 28 So. (2nd) 745 (Miss., Jan., 1947).

[152] Johnson v. State, 27 So. (2nd) 276 (Fla., July, 1946), following Richardson v. State, 100 Fla. 835, 130 So. 718 (1930).

[153] State v. Ramsey, 197 S.W. (2nd) 949 (Mo., Nov., 1946). The indictment referred to the date the murder victim was attacked, but not to the date of death.

[154] State v. Gibbs, 48 A. (2nd) 300 (N.J., July, 1946).

[155] Kissinger v. State, 25 N.W. (2nd) 829 (Neb., Jan., 1947). Compare Mexakahomni v. State, 25 N.W. (2nd) 772 (N.D., Jan., 1947), and the federal rule, Betts v. Brady, 316 U.S. 455, 62 S. Ct. 1252 (1942); Williams v. Kaiser, 323 U.S. 471, 65 S. Ct. 363 (1945). See also People v. Martin, 177 P. (2nd) 813 (Cal. App., Mar.,

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that the evidence justified the verdict, and that all errors thereby assignable are available to the appellant by his appeal.[156]

Where the defendant has had his day in court and his remedy, the due process requirement is satisfied; an Ohio statute providing for the revocation of a driver's license if the licensee fails within thirty days to satisfy a judgment against him arising out of an auto accident, was upheld under this rule.[157]

The only case on searches and seizures arose in the criminal court of appeals of Oklahoma. The court, relying on an earlier case,[158] ruled that the description of the house, the names of the occupants, and the legal description set forth in a search warrant should be read together, and that if the officer executing it could locate the premises without additional information, such a search warrant was sufficient.[159]

The Texas court of criminal appeals held that a signed confession is admissible evidence if the accused does not make any complaint about mistreatment during the questionings and if his guilt is not made to depend solely on his signed statement.[160] A Pennsylvania statute dating from 1860, providing that no witness who refuses to testify on grounds of self-incrimination shall be excused, but that no evidence given or facts divulged by him shall be used in any criminal prosecution against him, was declared unconstitutional.[161]

The supreme court of Washington held that the constitutional requirement that no cruel punishment should be inflicted was not violated as long as the court merely imposed a maximum sentence and the board of prison terms and paroles had not yet exercised its power and fixed a minimum term.[162] The supreme court of Nebraska held that the punishment of "hard labor" constituted an involuntary servitude and could not be imposed in a criminal proceeding—contempt in this case.[163] The supreme court of Mississippi held that a provision of the constitution that juvenile offenders should be kept apart from hardened criminals could not be applied in capital cases.[164]

1947). In civil cases, the law may deny the right to be represented if representation is permitted on appeal. Prudential Ins. Co. v. Small Claims Ct., 173 P. (2nd) 38 (Cal. App., Oct., 1946).

[156] Dobbs v. State, 29 So. (2nd) 84 (Miss., Feb., 1947).

[157] Ragland v. Wallace, 70 N.E. (2nd) 118 (Ohio App., Oct., 1946).

[158] Pitzer v. State, 69 Okla. Cr. 363, 103 P. (2nd) 109 (1940).

[159] Hughes v. State, 172 P. (2nd) 435 (Okla. Cr. App., Sept., 1946).

[160] Angel v. State, 200 S.W. (2nd) 169 (Tex. Cr. App., Jan., 1946).

[161] Commonwealth v. Frank, 159 Pa. Super. 271, 48 A. (2nd) 10 (July, 1946).

[162] State v. Fairbanks, 171 P. (2nd) 845 (Wash., Aug., 1946). Compare *Ex parte* Mooney, 173 P. (2nd) 655 (Wash., Oct., 1946).

[163] Smolezyk v. Caston, 24 N.W. (2nd) 862 (Neb., 1946).

[164] Lewis v. State, 28 So. (2nd) 122 (Miss., Nov., 1946).

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Procedural Requirements in Civil Suits. At various times, the legislatures of nine states have passed laws permitting courts to issue temporary writs of restitution in forcible entry or detainer proceedings pending the final decision, if the applicant for such a writ posts a bond. The Nevada statute permitted use of this remedy without notice or hearing and without giving any opportunity to the defendant to post a counter-bond and retain the premises during the trial. The court held, after a review of the law in the other eight states, that the law was unconstitutional without provision for a hearing and counter-bond.[165] Without a hearing, it was impossible for the court to fix the size of the bond properly. All this was pretty well conceded by the state. Its principal argument, which was rejected by the court, was that the requirement of a hearing could be implied from the statute, even though it was not expressly provided.[166] The opportunity for a hearing was held to be required by the constitution in cases involving escheated estates,[167] and on the reports of special masters in divorce proceedings.[168] Other cases in this group concern the method of giving notice permitted under the statutes. Alabama statutes were upheld which permitted notice to be left at defendant's principal place of business,[169] and service by registered mail where "the proceeding is only a continuation of a litigation which is already within the jurisdiction of the court."[170]

Taxation. The California supreme court upheld a franchise tax assessment based on the proportion of sales, property, and payroll in that state of a corporation consisting of an out-of-state parent corporation and several subsidiaries. The court declared that a subsidiary corporation could use a separate accounting system only if the business it did within the state was truly distinct from that done outside of it.[171]

Due process means that vested property rights yield slowly to legislation not in accord with common law concepts. This is demonstrated again in the case of unemployment compensation. The Washington statute which creates a lien on the plant, works, equipment, and buildings for

[165] Farnow v. Dist. Ct., 178 P. (2nd) 371 (Nev., Feb., 1947).

[166] Compare Walter Gelhorn, *Administrative Law; Cases and Comments* (Chicago, 1940), p. 451 ff.

[167] Taylor v. West. States L. & Mtg. Co., 176 P. (2nd) 755 (Cal. App., Feb., 1947).

[168] Nelson v. Nelson, 176 P. (2nd) 648 (Ore., Jan., 1947). See also *supra*, note 24.

[169] Krassner v. Curley, 29 So. (2nd) 224 (Ala., Jan., 1947), following Campbell v. State, 242 Ala. 215, 5 So. (2nd) 466 (1941).

[170] Cukor v. Cukor, 49 A. (2nd) 206, 209 (Vt., Oct., 1946). See also Reina v. Hope, 29 So. (2nd) 904 (Fla., Jan., 1947); Payne v. Lee, 24 N.W. (2nd) 259 (Minn., July, 1946).

[171] Edison Cal. Stores Inc. v. McColgan, 176 P. (2nd) 697 (Cal., Jan., 1947). See also Great Western Sugar Co. v. Mitchell, 174 P. (2nd) 817 (Mont., Nov., 1946); Bd. of R. R. Commiss. v. Aero, etc., Co., 172 P. (2nd) 452 (Mont., Sept., 1946).

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failure of the employer to pay the tax was declared unconstitutional.[172] In part at least, this seems to be because the owner and the employer may not be one and the same person, although even at common law it is not unknown for the lessor to be held accountable for the misuse of his property by a lessee.

Eminent Domain. The definition of what constitutes a public purpose for which private property may be taken is always troublesome, particularly when large industries move to small communities. In one case this year, it was held that when a street was closed at the request of the town's largest industry, this did not mean that the purpose was not public.[173] In fact, since the city council heard testimony to the effect that the change would result in increased employment and taxes, it was justified action. But the court implied that compensation might be due from the city to property owners whose access to their property was adversely affected by the closing of the street. Elsewhere it was held, however, that this right of access is not so inviolable that a city council must grant a permit to construct a driveway over the sidewalk where it will create a traffic hazard.[174] Planning received the support of the North Carolina court, which held that property taken for a sewer system which now serves only seventeen families was taken for a public purpose, since an increasing population will use its facilities.[175]

A rather unique case arose in New Hampshire involving the use of parking meters.[176] The legislature, considering the passage of a statute authorizing municipalities to install meters, addressed a request to the supreme court for an advisory opinion. Among other questions, the legislature wanted to know whether the installation of such devices would impose on the city the obligation to make compensation to property owners whose property fronts on the street. The court said that the streets used belonged to the city already and could be used for any public purpose, since its title was absolute when compensation was first made.

Retrospective Acts. The principles governing the retroactive application of statutes are fairly uniform. Each year produces a number of cases in which they are applied, usually with somewhat less uniformity. It is clear that the legislature may not affect vested rights retroactively. It is less clear when rights become vested. A dower right in a husband's property was held not to be such a vested right, and that it could therefore be abolished retroactively so long as the husband was still living at the time the law was passed.[177] This is true also with respect to rights in real estate

[172] State v. Lawton, 172 P. (2nd) 465 (Wash., Aug., 1946).
[173] City of Rock Hill v. Cathran, 40 S.E. (2nd) 239 (S.C., Nov., 1946).
[174] Alexander Co. v. City of Owatonna, 24 N.W. (2nd) 244 (Minn., Aug., 1946).
[175] City of Charlotte v. Heath, 40 S.E. (2nd) 600 (N.C., Nov., 1946).
[176] Opinion of the Justices, 51 A. (2nd) 836 (N.H., Mar., 1947).
[177] Turner v. Turner, 185 Va. 505, 39 S.E. (2nd) 299 (Sept., 1946).

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given to an unborn child.[178] With respect to the validation of improper tax levies, the problem is somewhat more complex. Where the form of a tax assessment is not in accordance with the requirements of the statute, the federal courts and the courts of some fourteen states hold that the legislature may retroactively validate the assessment, so long as the parties were given adequate notice.[179] Some five states, including Virginia,[180] hold otherwise. But the Virginia rule shows some signs of changing. It is now held that public rights, such as the time within which appeals may be brought, and statutes of limitations,[181] may be changed retroactively.[182] Further, so long as the change occurs before the case to be affected has been finally disposed of on appeal, no vested private rights are impaired.[183] The retroactive validation in such cases, however, can refer to "those cases where there has been an irregular exercise of existing powers, and not to cases where the power was lacking in the first instance."[184] Nor can a statute impose liens on property after it has been sold.[185] The legislative intent to act retrospectively must usually be clear, for, in the absence of specific language to the contrary, statutes will be applied prospectively only. This is true even where the legislature could have done otherwise and no private rights are involved. As applied, this means that where unemployment compensation boards construed the law to permit denial of compensation to employees who are discharged for willful misconduct (and the courts have held that such a construction is unauthorized by the statute)[186] the statutory amendment will be construed to apply prospectively, although a clear intent to the contrary can be implied.[187] Yet the legislative intent need not always be expressed. A statute making irrevocable conveyances of property possible was construed retrospectively when it was well known that its purpose was to permit evasion of federal tax laws on trusts, since to be effective in this way it must be applied retroactively.[188]

[178] Pinkham v. Unborn Children, 40 S.E. (2nd) 690 (N.C., Dec., 1946).

[179] See 25 *A.L.R.* 1136. See also *supra*, note 87.

[180] Beginning with Martin v. So. Salem L. Co., 94 Va. 28, 26 S.E. 591 (1897).

[181] Farris v. N.S.W. Ry. Co., 141 Va. 622, 126 S.E. 673 (1925); City of Norfolk v. Stephenson, 185 Va. 305, 38 S.E. (2nd) 570 (June, 1946).

[182] But compare Cal. Empl. Comm. v. Payne, 176 P. (2nd) 716 (Cal. App., Jan., 1947).

[183] Darley v. Cook, 39 S.E. (2nd) 665 (Ga., Sept., 1946); Longacre Pk. Heat. Co. v. Delaware Co., 50 A. (2nd) 706 (Pa. Super, Jan., 1947).

[184] People v. Riche, 71 N.E. (2nd) 333 (Ill., Jan., 1947).

[185] Perry v. Dept. of Soc. Wel., 23 N.W. (2nd) 279 (S.D., June, 1946); Wheatley v. Root Co., 69 N.E. (2nd) 187 (Ohio, Oct., 1946). Compare Holland v. Ft. Pierce Fin. & Const. Co., 27 So. (2nd) 76 (Fla., June, 1946).

[186] Some forty-four states have this omission in their statutes. See McFarland v. Unempl. Comp. Bd., 158 Pa. Super. 418, 45 A. (2nd) 423 (Jan., 1947).

[187] Dept. of Labor v. Unempl. Comp. Bd., 49 A (2nd) 278 (Pa. Super., Oct., 1946).

[188] Pinkham v. Unborn Children, 40 S.E. (2nd) 690 (N.C., Dec., 1946).

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FOREIGN GOVERNMENT AND POLITICS

THE INFLUENCE OF IDEAS ON POLICIES AS SHOWN IN THE COLLECTIVIZATION OF AGRICULTURE IN RUSSIA

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The relationship between ideas and social and political changes remains one of the major controversial questions in the social sciences. Certain groups, particularly the Marxists and the behaviorists in both psychology and sociology, relegate ideas to a very subordinate rôle. They claim that for the most part changes in ideas are the result of changes in material conditions or other concrete external factors to which men in society must adjust. At the other extreme are certain philosophers, historians, and philosophically inclined political scientists who assign to ideas an outstanding rôle in the development of economic, political, and social institutions.

The controversy is one that has immediate and practical significance, as well as purely scientific importance. If the United States is to achieve a successful adjustment in a world of rapid economic and political change, the country's leaders will need an accurate understanding of the factors behind these changes, and the probable directions of such change. Such understanding cannot be obtained without knowledge of the major factors involved, such as material conditions and abstract ideas, and the relative importance to be attached to each one. Such knowedge is particularly important in assessing changes in the power relationships among America's potential allies and competitors in the modern world. At the present time, if one may judge from the published diaries of our ambassadors, as well as from what is known of the operations of various intelligence agencies that have received a good deal of publicity since the end of the war, there is no general agreement concerning the procedures to be followed in evaluating symbolic and ideological data, such as statements by important foreign leaders, programs of political parties, and the like, as opposed to more concrete data, such as information on natural resources, economic trends, and similar matters.

It is hoped that the present article will make a modest contribution toward a more exact understanding of the relationship between ideas and political and economic changes and stimulate further discussion of the

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topic through a careful analysis of one important case: the development of the goal of collectivized agriculture in the Soviet Union.[1]

The tentative theoretical conclusions, reached chiefly through a detailed study of this case, may be stated as five major propositions.

Proposition 1. The historic experience of various social groups provides them, and particularly their leaders, with a series of formulae or stereotypes, to use Lippmann's familiar term, through which they sense and interpret the economic and political tensions in the society around them. These formulae provide a framework for ordering and interpreting experience. The fact that in the modern world few social tensions are experienced directly, but instead make their impact on the individual through newspapers, radio, books, and other media, increases the selective operation of such formulae and stereotypes. The latter may serve in this fashion to "screen out" from the consciousness of the leaders and other persons in a given social group any awareness of certain tensions, and simultaneously increase the awareness of other tensions.

Proposition 2. Out of this awareness of various tensions there develops, by both logical and non-logical processes, a series of goals or objectives. These goals are proposed ways of dealing with the tensions as they are felt and interpreted. The goals, together with the analyses and interpretations of the tensions, constitute the chief elements in political programs, or any given economic and political ideology.

Proposition 3. If the given political or social group under consideration has an opportunity to put some of its objectives into practice, new problems and new tensions may result from these actions. The effort to adapt to these tensions is likely to result in a partial modification of the original set of goals and analyses. In this adaptive process, new goals may be developed and old ones discarded or retained for purely ritualistic purposes. The latter are typically uttered on state occasions to an audience that knows they no longer bear any relation to reality.

Proposition 4. At the same time, within a given group a certain stability in goals, analyses, and actual political behavior is maintained, partly through the continuity of the leading personnel, partly through the indoctrination of new personnel with the old ideas. There is also an observable tendency to meet new situations with old and sometimes even temporarily discarded ideas. As external situations change, there may develop

[1] This article is a condensed version of one section of a longer study on the evolution of Soviet institutions and on contemporary factors working for and against change. A preliminary sketch of certain other aspects of the problem has appeared in the *Journal of the History of Ideas*, October, 1945, under the title, "Some Readjustments in Communist Theory." The writer welcomes any critical comments that may lead to a more effective analysis of the theoretical and historical problems involved.

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within the leadership of any given group a variety of ideas concerning the most advantageous way to meet the situation. However, such variations tend to be all around a central theme. Within a limited time span of, let us say, three generations it appears that there is no complete reversal of the earlier ideology. In this way the variety of possible adaptations of any given political group seems to be rather limited. Similarly, the number of purely Machiavellian opportunists in political affairs seems to be extremely insignificant.

Proposition 5. Whether a given group continues to modify its goals, analyses, and political behavior, or returns to the original doctrine may depend largely on one factor. If the modifications and "toning down," or ritualization, of the original doctrine, in both theory and practice, strengthens the power position of the new *élite*, it may continue indefinitely. If, on the other hand, it creates new social tensions and weakens the power position of the new *élite*, there may be a sharp reversion to the earlier program.

We may now show how these propositions can be derived from the development of Bolshevik ideas and Soviet institutions in the field of agriculture, without by any means implying that these propositions are proved by the fact that they apply to one specific case. Furthermore, although the writer believes that this theoretical framework provides the most satisfactory explanation to date of this case, other more satisfactory theoretical interpretations are almost certain to be invented in the course of time.[2]

Prior to the Revolution of 1917, Lenin asserted on a number of occasions that the misery of the Russian peasant and the difficulties of Russian agriculture were due to the concentration of land in the hands of the big landowners and feudal aristocracy.[3] A further important source of agrarian discontent, according to him, was the survival of "antiquated" and "feudal" institutions such as the village commune.[4]

In his analysis and interpretation of pre-revolutionary social tensions, Lenin pointed to two possible lines of development. One possibility was along the Prussian model, through the gradual transformation of the large estates into "Junker-bourgeois" estates, by turning the mass of the

[2] The omission for reasons of space of certain related problems in industry and foreign affairs also leads to an unavoidable over-simplification. For a valuable survey of the relevant Soviet statistics, see W. Ladejinsky, "Collectivization of Agriculture in the Soviet Union," *Political Science Quarterly*, Mar., 1934, pp. 6–20.

[3] See V. I. Lenin, "The Agrarian Program of Social Democracy in the First Russian Revolution, 1905–1907," written in November–December, 1907, in *Selected Works* (New York, n. d.), III, 168, for his interpretation of the official figures on land distribution.

[4] The commune (*mir*) was responsible for tax collections, and for determining the dates of ploughing, harvesting, and other agricultural processes, as well as the periodic redistribution of the land among the inhabitants.

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peasantry into landless peasants and keeping them down to a pauper standard of living. Parallel with this development there would be, in his opinion, the growth of a class of well-to-do peasants, or "kulaks," who would participate in the exploitation of the masses. This process would break up the village commune and the other "antiquated" and semi-feudal institutions in the interest of the landlords. The second possible line of development Lenin regarded as the American model. This too required the destruction of the old feudal forms, but in the interest of the peasant masses and not the landlords. The end result would be a mass of free farmers. Both of these possibilities he regarded as strictly capitalist developments, though he stressed that the latter would be far more beneficial to the masses.[5]

On the basis of this interpretation of the economic and political situation in Russia prior to the Revolution, Lenin stated very clearly that his party ought to promote the latter type of development, namely, the "bourgeois" growth of a mass of free farmers. This was to be their immediate goal. While Bolshevik political tactics and alliances were to be governed accordingly, he cautioned his followers against confusing this bourgeois goal with the ultimate one of socialism.[6]

The means by which the feudal landlords and the institution of the *mir* were to be destroyed was the nationalization of the land. Though this term is now associated with socialist measures, and at the time it was proposed included the "total abolition of private property in land," Lenin regarded it as a purely bourgeois device for the purpose of destroying pre-capitalist relationships. "In the sphere of economics, nationalization in a bourgeois agrarian revolution is more far-reaching than anything else, because it breaks up all the medieval forms of land-ownership. . . . Nationalization enables the fences of land-ownership to be torn down to the utmost degree, and the land to be 'cleared' for the new forms of farming suitable to the requirements of capitalism."[7]

In his pre-revolutionary writings and polemics, most of Lenin's attention was devoted to the problem of how best to achieve the first, and in his opinion, distinctly capitalist objective. It is only rarely that he gives us a glimpse of the agricultural aspects of his ultimate goal. There is contained in these glimpses only the sketchiest hint of the large-scale collective farms that now are the basis of Soviet agriculture. In a political pamphlet published in 1903, Lenin stated that after the victory of the working class over the bourgeoisie the workers would "take the land away from the big proprietors" and introduce "coöperative farming" on the big estates, with elected managers, eight-hour shifts for the workers, wide use of

[5] Lenin, *op. cit.*, pp. 279–280.
[6] *Ibid.*, p. 258.
[7] *Ibid.*, pp. 238–239. See also pp. 212, 220, 232, 234, 235, 266, 283.

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machinery, and other features. This proposal does not represent more than a way of making efficient use of the big estates, as Lenin specifically stated that the small peasant would continue in operation.[8]

This formulation of the social tensions in Russian agriculture and of ways to resolve them was elaborated at several party congresses before the 1917 Revolution and circulated in pamphlets, newspapers, and discussion groups until it became more or less the stock of ideas with which the Bolshevik leaders were equipped when they came into power. These ideas provided the basic pattern, abandoned and modified in some respects and elaborated and amplified in others, for subsequent thinking and acting on agricultural problems.

On November 8, 1917, the day following the Revolution, the All-Russian Congress of Soviets passed, at Lenin's suggestion, a decree abolishing landed proprietorship without compensation, and putting the landed estates, monasterial, and church lands, under the control of various local groups, including peasant soviets, pending the meeting of the Constituent Assembly. Land was to be distributed "on an equality basis" in conformity with either the labor standard or the consumption standard (i.e., how much land a man could work with his own family or how much he needed to feed his family) according to local conditions. The employment of hired labor was prohibited. Lenin's avowed purpose in this move, which was not as thoroughgoing as some of his followers wished, was to win the support of the peasants by eliminating the landlords.[9]

At this time and later, the Bolsheviks freely stated that in the passage of this decree they were borrowing from the program of the left Social Revolutionaries, a wing of the chief peasant party. On the basis of these admissions, some students have concluded that the first important act by the Bolsheviks was determined by purely tactical and opportunistic considerations. While this may be true of the provisions for an equalitarian distribution of the land, it cannot very well apply to the main measure, the abolition of landed proprietorship and the confiscation of estates (i.e., nationalization). This was directly in line with Lenin's earlier views, and with programmatic statements of the Bosheviks after Lenin's return to Russia some months prior to the November Revolution.[10]

During 1918, Communist enthusiasts set up a few communes on the former estates of the landlords. In these communes all property, which

[8] "To the Rural Poor," *Selected Works*, II, 293.

[9] Lenin, *Selected Works*, VI, 406–409.

[10] On some occasions the Bolsheviks had opposed nationalization under Tsarist auspices as a measure that might strengthen the régime. With the Bolsheviks in power, this objection, of course, disappeared. The problem of nationalization and the competing views presented are analyzed in an illuminating but unfortunately rare brochure, V. Meshcheryakov, *Natsionalizatsiya i Sotsializatsiya Zemli* ["Nationalization and Socialization of the Land"] (Moscow, 1918), especially pp. 36–41.

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consisted chiefly of the stock and implements of the landlords, was held in common.[11]

The first actual decree on the "transition to socialist agriculture" did not come until February 14, 1919.[12] The decree declared all the land to belong to a single governmental fund, and, in the words of a Russian legal authority, "took a negative attitude towards individual enterprise." It also recognized the need for a transition to collective farms. During the remainder of 1919, the Party issued a whole series of further decrees aiming at the maximum beginning of collectivization.[13] By the end of 1920 there were a total of 4,400 state farms organized on a collective basis, with an average area of 1,150 acres. These represented merely a minute beginning. By this time only three per cent of the peasants' land was being jointly cultivated by collective labor.[14]

On April 30, 1920, a decree of the Council of People's Commissars discouraged further redistribution of the ploughland, and another decree of May 27, 1920, permitted the retention by the peasant of more than the "norm" of land allotted to him so long as he was actually working this land. These decrees foreshadowed the New Economic Policy of 1921, which constituted an admitted reversal of previous policy.

During this period 1917–20, certain significant elaborations were made on the original doctrines concerning agriculture. To a very marked extent, these elaborations were a response to the conditions created by the Bolsheviks themselves in the chaos of the Revolution. They consisted of an increased emphasis on collectivization as a social goal and the development of a series of theoretical justifications for this goal. In this fashion the Bolsheviks were attempting to find a solution to their difficulties that would be in accord with socialist doctrine. Although collectivist ideas were dropped for a time after 1921, their significance lies in their later revival under a new set of tensions and a new set of conditions more favorable to their execution.

As the Bolsheviks in this early period attempted to meet the conditions presented by the Revolution, the civil war, the famine, and their own attempts to set up a new society, they became convinced that measures were necessary to raise the productivity of agriculture. In a speech of November

[11] "Kommuna sel'sko-khozyaistvennaya," *Bolshaya Sovetskaya Entsiklopedia* ["Agricultural Commune," *Large Soviet Encyclopedia*] (Moscow, 1928), XXXIII, 646.

[12] I. I. Evmikhiev, *Zemel'noe Pravo* [Land Law] (Moscow, 1923), pp. 77–99, gives a convenient summary of the early land legislation. Unless otherwise indicated, the dates and contents of these decrees are taken from this source.

[13] Lenin, *Selected Works*, VIII, 142, note, gives a summary of these measures.

[14] Sir John Maynard, *The Russian Peasant and Other Studies* (London, 1943), p. 123.

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8, 1918, Lenin remarked that division of the land was all very well in the beginning, as its purpose was to show that the land was being taken from the landlords and handed over to the peasants. But this measure, he added, was not enough. The solution lay only in social cultivation of the land. "We are being led to this conviction by force of experience. Salvation from the disadvantages of small-scale farming lies in communes, cultivation by cartels, or peasant associations. That is the way to raise and improve agriculture, to economise forces, and to combat the . . . parasites and exploiters."[15] For some time thereafter, Communist writings and speeches on the problem of collectivization emphasized the inefficiency and low productivity of small-scale proprietorship.[16]

However, Bolshevik or Communist doctrine during the heroic period tended to "screen out" of the consciousness of the new rulers awareness of external circumstances that made their program extremely difficult, or, as events indicated, impossible to achieve at that time. These circumstances were the collapse of the entire productive apparatus and the indifference and actual hostility of most of the peasantry to their objectives. Both industrial and agricultural production fell off catastrophically in this period.

A series of peasant uprisings in 1920 and 1921, together with the rebellion of the sailors in the Red Navy at Kronstadt, formerly a center of Bolshevik support, forced these circumstances to the attention of Lenin and other leaders. While the official change in policy was most abrupt, there is evidence that for some months before the actual change took place persons close to Lenin who were in touch with conditions in the countryside attempted to persuade him to change his tactics. Furthermore a degree of free discussion of major policy matters was permitted in the Party at that time, with the result that a number of alternate solutions could be presented.[17]

At the Tenth Congress of the Russian Communist Party, in March, 1921, Lenin announced the New Economic Policy, through which the Communists hoped to back out of their difficulties. The Congress adopted a resolution, confirmed and amplified by decrees of the party Central

[15] Lenin, *Selected Works*, VIII, 140–141.

[16] See Lenin, *Selected Works*, VIII, 159, 195, and *Vosmoy S'ezd R. K. P. (b), Stenograficheskiy Otchet, 18–23, Marta* 1919 [Eighth Congress of the Russian Communist Party, March 13–23, 1919, Stenographic Report] (Moscow, 1933), p. 230, for repetitions of this argument.

[17] For a survey of the various alternate solutions, see Maurice Dobb, *Russian Economic Development Since the Revolution* (New York, 1928), pp. 152–165. Trotsky claimed that in February, 1920, he advanced a program similar to the NEP on the basis of his experience directing economic work in the Urals. See Leon Trotsky, *My Life* (New York, 1930), pp. 463–464. For a similar suggestion by a non-party specialist, see Simon Liberman, *Building Lenin's Russia* (Chicago, 1945), p. 93.

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Committee, which gave the peasants the right to trade in their produce after they had fulfilled their obligations to the government. By granting the peasants freedom to trade in their surpluses, it was hoped that the peasants would be given an incentive to greater production—a hope that was justified by later events. A decree of the Central Committee of March 23, 1921, granted the peasants full and continuous use of the land. Finally, a decree of the Council of People's Commissars on November 14, 1921, recognized the liquidation of various governmental agricultural undertakings, and of the communes, and took various bookkeeping measures in accord therewith.

The retreat from the goals of collectivization continued for several years. It appears to have reached its farthest point in April, 1925. The Politburo, highest organ of the Party, on April 16 specifically affirmed the right of the peasants to make use of hired labor, though this act merely recognized a situation that had existed for some time.[18] Likewise on April 30 the Central Committee directed local soviet and party organizations to permit a wider application of the right to lease land, which had in the past been limited to the period of a single crop rotation.[19]

Corresponding to this retreat in the field of action was a retreat from previous goals in the field of ideas, although the latter did not go as far as the former. Perhaps the farthest point in the ideological retreat is marked by the boast of Kamenev, prominent party leader, to the Twelfth Party Congress in 1923 that in five years the program of an agrarian revolution had actually been carried out.[20] In this fashion he justified, by implication at least, the maintenance of the *status quo* under the NEP. However, the resolutions of the Congress declared that one of the tasks of the Soviet government was the creation of the simplest forms of economic coöperation among the peasanty, and urged that certain surviving collective organizations should receive preference in the government's program of support for the peasantry.[21]

As Lenin himself anticipated would be the case when he promulgated

[18] The Politburo decision was followed by a decree of the Council of People's Commissars published in *Pravda* and *Isvestia* on April 23, 1925. In 1923, the resolutions of the Twelfth Congress had recognized the increased use of hired labor and recommended certain safeguards to protect the poor peasants who were the source of this labor.

[19] Text of the Central Committee directive in M. Savel'ev i A. Poskrebishev, *Direktivi V.K.P.(b) po Khozyaistvennim Voprosam* ["Directives of the Communist Party on Economic Questions"] (Moscow, 1931), p. 220. For comment, see Dobb, *op. cit.*, pp. 348–349.

[20] *Dvenadtsaty S'ezd Rossisskoy Kommunisticheskoy Partii (Bolshevikov), Stenograficheskoy Otchet* [Twelfth Congress of the Russian Communist Party, Stenographic Report] (Moscow, 1925), p. 391.

[21] *Ibid.*, pp. 679–680.

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the NEP in 1921, the execution of the new policy solved some problems and created a series of new ones. There is no doubt that the NEP produced a revival of economic life in Russia. At the same time, this revival was accompanied by severe social tensions. These tensions help to explain why no Thermidor situation developed. The recovery of urban life and industry was accompanied by a partial revival of the private trader and the private producer. While the countryside enjoyed an increase in productivity, the stubborn survival of the *mir* and the continuing difficulties of creating an adequate exchange between town and country of their respective products presented serious problems. Finally, the return of class stratification to village life created, together with the other difficulties, a series of problems whose solution was imperative if the Communists were to retain their newly won power. As Trotsky and others pointed out, the NEP was encouraging the growth of special interest groups who were sharply opposed to the ruling *élite,* and who could end by overthrowing them.

A number of alternate solutions to this set of problems was offered during the acrid discussions that began almost immediately after the promulgation of the NEP. However, all of these solutions were variations on a single theme. All of the contestants in the bitter struggle that culminated in the expulsion of Trotsky and others, and the establishment of a dictatorship under Stalin, argued that their final objective was socialism. Likewise, all of them agreed at one time or another that the outstanding danger in the NEP was the growth of a new capitalist bourgeoisie hostile to the Bolsheviks. At the several party congresses, and in the press, Trotsky, Kamenev, Zinoviev, Kalinin, Bukharin, and Stalin all made this point. There was agreement on the nature of the dilemma, disagreement on the way to escape from it.

In the space of a brief article it is impossible even to summarize all of the proposals offered, or even the procedures that were actually attempted. The present writer has been able to distinguish at least six major lines of thought and action in a survey of the contemporary literature. Stalin's solution, the ultimate winner, combined elements from several of them, including Trotsky's. Its essential elements, however, go back to Lenin's arguments about the inefficiency of small-scale agriculture and the consequent necessity for large-scale socialized agriculture, which were put forth during the first and unsuccessful efforts at collectivization immediately following the Revolution.

Stalin's report to the Fifteenth Party Congress in December, 1927, marks the turning point in the road towards collectivization. In this speech Stalin pointed out that the increase in the productivity of agriculture lagged far behind the corresponding increase in industry. This lag indeed threatened to upset the balance between industry and agriculture. It could

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therefore upset the whole program of economic self-sufficiency which had been decided upon at the Fourteenth Congress in 1925. The reasons for this lag, he said, lay in the fact that agriculture was conducted in an unplanned manner by scattered owners of small plots. Industry, on the other hand, was operated in large units, subject to planned socialist control.[22] On the same occasion, the well known agricultural economist Yakovlev produced numerous figures purporting to show that large-scale farmers were much more productive than small ones.[23] Supporting the same argument, Molotov pointed out that the curbing of the capitalist elements in the countryside was merely a policy of palliatives, no matter how well it was done.[24] From this general interpretation of the situation Stalin drew the conclusion that: "The way out is in the transition from small-scale peasant enterprises to large-scale, unified enterprises on the basis of a socialized working of the land, in the transition to collectivized working of the land on the basis of a new and higher technique."[25] Thus the new party line came to parallel very closely Lenin's arguments of 1918.

Soon afterwards, steps were taken to promote the movement of the peasants into the *kolkhozi*, though reliance on voluntary methods continued for a while. A little more than two years were to elapse, during which the First Five Year Plan was announced, before the party embarked on its policy of the "liquidation of the kulaks as a class" and widespread forced collectivization.[26]

The story of the upheavals caused by this policy, of the temporary retreats, and eventual success is a familiar one. By collectivization, and through the Five Year Plans, the Communists assured themselves the necessary material basis, to use the Marxist term, for the political and ideological structure they attempted to impose in 1917. The evolution of collectivization in Russia provides at least one example of an idea or group of ideas leading to the creation of a specific economic and political situation.

Political responsibility has forced several changes from the original goals. But these readjustments have been chiefly within the pattern of original doctrine. Though there has been modification of the original

[22] Stalin, *XV S'ezd Vsesoiuznoy Kommunisticheskoy Partii (b) Stenograficheskiy Otchet* [Fifteenth Congress of the Communist Party of the Soviet Union, Stenographic Report] (Moscow-Leningrad, 1928), pp. 55 ff.

[23] *Ibid.*, pp. 1217–1222.

[24] *Ibid.*, pp. 1061–1062.

[25] *Ibid.*, p. 56; see also p. 59.

[26] A decree of the party Central Committee, "On the tempo of collectivization and measures of government assistance in kolkhoz construction," January 5, 1930, is usually regarded as the opening gun in this campaign. Text in Savel'ev and Poskrebishev, *op. cit.*, pp. 662–664. The Communists deny that collectivization was forced upon the peasants, though this is the opinion of most observers.

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doctrine, there has been no outright rejection of it in favor of another doctrine and another set of institutional forms, such as peasant proprietorship.

The process of dynamic interaction between ideas and institutions is, of course, still continuing. The tensions that remain in the functioning of contemporary agricultural institutions, such as the conflict between the individual interests of the farmer and the demands made upon him by the collective organization of agriculture, may lead to further readjustments of both ideas and practices. However, an analysis of the contemporary factors affecting future developments must be reserved for a longer study now in progress.

In this sketch of orthodox Communist theory and practice up to 1930, the five processes noted in the beginning of this article occur several times. One may observe how the interpretation of conditions led to specific goals before the Revolution, in the heroic period following the Revolution, in the development of the New Economic Policy, and in the final choice for collectivization. It is also possible to observe how the orthodox doctrine provided a framework for the interpretation of events, stressing some factors and eliminating others from the thinking of the leaders in each of these periods. These processes are described in general terms in the first two propositions.

The third and fourth processes, concerning the readaptation of interpretations and goals as a result of conditions created by actions taken on the basis of previous goals, is shown first in the initial efforts to collectivize based on an elaboration of the earlier theories, secondly in the temporary and partial abandonment of these ideas under the impact of external conditions, and finally, in the return to modified and elaborated versions of these ideas in the effort to resolve the tensions created by the NEP.

The importance of the relationship between a given set of policies and the power position of the *élite*, discussed in the fifth proposition, appears most clearly in the abandonment of the NEP, when the latter's continuation threatened the prolonged existence of the first "workers' state." It may also be noted in the adoption of this same policy, as well as in the immediate grant of the lands to the peasantry.

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NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

A Word of Explanation. Readers of this REVIEW will agree that, compared with many periodicals, a good record for promptness of publication was maintained during the war years. It is hoped and expected that, with continuing coöperation from all concerned, service will be equally satisfactory in the future. The June issue, however, appeared three weeks late, and the present issue may not do much better—the sole reason being a substantially involuntary shut-down of the Banta Company's plant for purposes of vacation for all employees at the same time, in accordance with a labor pattern currently assuming national scope.

Under date of July 7, announcement was sent to all members of the American Political Science Association of the removal, by vote of the Executive Council, of the offices of the secretary-treasurer from Northwestern University to Ohio State University. This meant that eleven years of diligent and faithful service of Professor Kenneth Colegrove as secretary-treasurer had, at his own insistence, come to an end. During its forty-three years, the Association has had a succession of secretaries (seven or eight in all), with none, however, occupying the post as long as Professor Colegrove; and without disparagement of others who have given time and effort to the work entailed, it is fair to say that none devoted himself more assiduously to promoting the organization's interests and the well-being of the political science profession in general. Possibly the most tangible evidence of Professor Colegrove's devoted stewardship is a membership (now approaching forty-five hundred) practically double that enrolled when he took office; and none knows better than the writer of these lines how zealously and ingeniously he worked, in season and out, to build up such a membership. To measure his service merely in terms of membership cards would, however, do him grave injustice. Even more significant would be the insight, generosity, and enthusiasm with which he instigated, supported, and guided many, if not most, of the Association's activities; the morale which his influence inspired and cultivated; the cordial liaison which he maintained, always to the Association's credit and benefit, with kindred social scientists and their organizations; and, not least—or easiest—the management of the Association's annual meetings on lines that have made them the profitable and pleasurable occasions that we know today. The new secretary-treasurer, Professor Harvey Walker, comes into office auspiciously. He has served for four years as the only assistant secretary-treasurer that the Association ever had and knows the organization's affairs as no other ever did

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when entering office. He has zest for the job; and from him may confidently be expected service and leadership that will carry the Association to new levels of achievement and usefulness.

The following alterations in the composition of committees of the American Political Science Association as published in the previous issue of the REVIEW are herewith reported: (1) Committee on Endowment, name of William Y. Elliott (Harvard University) inadvertently omitted; (2) Provisional Panel on the Creation of a Committee on Government and Labor-Management Relations, Avery Leiserson (University of Chicago) and Harold Winkler (University of California) have thus far accepted membership; (3) Committee on Awards, Panel on Government and Democracy (Woodrow Wilson Foundation), President Harry D. Gideonse (Brooklyn College) and Thomas K. Finletter (New York City) have been added.

Professor Franklin L. Burdette, editor of the forthcoming new edition of the *Directory of the American Political Science Association*, reports delays arising from slowness of members in responding to the questionnaire sent out in quest of information and urges prompt coöperation on the part of all. Questionnaires are to be returned to him at the University of Maryland, College Park, Md.

After serving as chairman of the department of political science for seventeen of the past twenty years, Professor William Anderson, of the University of Minnesota, has requested and obtained release from the post, and at the end of the fall quarter, 1947, will be succeeded by Professor Harold S. Quigley. Professor Anderson will then take leave for the winter quarter.

Professor Austin F. Macdonald, of the University of California, will be on sabbatical leave during 1947–48, and will visit the principal countries of Latin America, obtaining information for a forthcoming book on Latin American politics.

Professors James K. Pollock, of the University of Michigan, and Alpheus T. Mason, of Princeton University, gave courses at Stanford University during the summer quarter.

During the summer, Professor William Y. Elliott, of Harvard University, was appointed temporarily to the position of analyst in international relations in the Legislative Reference Service, Library of Congress, and Professor Rodney L. Mott, of Colgate University, was appointed legal analyst in the State Law Section, for a period of two months, to prepare a new and definitive edition to the constitutions of the various states.

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Under appointment by Governor Bradford, Professor Morris B. Lambie, of Harvard University, is serving on a five-man advisory commission on state and local finances in Massachusetts.

At the University of Michigan, Professor John W. Lederle has been appointed secretary of the executive committee of the Institute of Public Administration, replacing Professor John A. Perkins, who resigned to become state budget director.

Drs. David N. Rowe, of Yale University, and Yuen-li Liang, director of the Division of Development and Codification of International Law, United Nations, taught at the University of Michigan during the recent summer session.

Professor Sigmund Neumann, of Wesleyan University, served as visiting professor at Harvard University during the second half of last year and has been teaching at Columbia University during the summer.

Professor Philip Jessup, of Columbia University, gave courses on international law and international government and administration at the University of Washington during the summer.

At the University of Washington. Professor George A. Shipman will henceforth supervise a new graduate program in public administration. The curriculum will consist of a series of seminars in American institutions, the administrative process, public management, public law, the economics of public activity, and administrative problems; and the work will lead to a new specialized master's degree in public administration.

Professor Charles Fairman will return to Stanford University in the autumn quarter after sabbatical leave, and will offer courses in the Law School and in the department of political science. During his absence, Professor Philip W. Buck is acting chairman of the department.

Professor William P. Maddox, on leave from the University of Pennsylvania, has been appointed director of the newly established Foreign Service Institute in the Department of State.

Professor W. Hardy Wickwar, of Hamilton College, is serving temporarily as a specialist in the Social Affairs department of the UN Secretariat for the purpose of setting up a study, requested by the Economic and Social Council, of methods of social welfare administration in present use in various countries.

At George Washington University, Dean William C. Johnstone has been granted an additional year's leave of absence to permit him to continue as chief public affairs officer of the American Commission to India.

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During June—to be exact, on Friday, June 13—Professor Frederick L. Schuman, of Williams College, suffered injuries in an automobile accident at Milford, Massachusetts. He has since been recovering satisfactorily, with his summer courses at Williams taken care of by Professor Carl Deutsch, of the Massachusetts Institute of Technology.

Dr. Albert Shaw, from 1891 to 1937 editor of the *American Review of Reviews*, and an early president of the American Political Science Association, died in New York City on June 25 at the age of eighty-nine. He was the author of a number of books on municipal government and other aspects of public affairs.

Professor Harvey C. Mansfield, of Yale University, has been appointed to a professorship at Ohio State University and will succeed Professor Henry R. Spencer as chairman of the department of political science. In 1936, Professor Mansfield served as senior consultant to President Roosevelt's Committee on Administrative Management, and in 1942 was called to Washington again as price executive and later chief of the policy analysis branch of the OPA. Professor Spencer will continue teaching.

The University of Maryland announces the promotion of Dr. Franklin L. Burdette to the rank of professor and of Dr. Robert G. Dixon to that of assistant professor. New instructors for next year will be Messrs. Edward G. Misey, of Columbia University, and Donald P. Brown, of the American University.

Dr. Robert W. McCulloch, formerly of Oklahoma Agricultural and Mechanical College, has accepted an associate professorship at Western State College, Gunnison, Colorado.

Mr. Paul Beckett, for two years professor of government and assistant director of the division of government research at the University of New Mexico, has accepted an assistant professorship at Washington State College, where he will offer courses in public administration and local government.

Professor Weldon Cooper, formerly of the U. S. Bureau of the Budget and the University of Alabama, has been appointed professor of political science and associate director of the bureau of public administration at the University of Virginia.

Dr. Ward Stewart, formerly assistant director of Foreign Funds Control in the U. S. Treasury Department and assistant executive director of the War Refugee Board in the Executive Office of the President, has joined the staff of the U. S. Atomic Energy Commission.

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At Boston University, a new department of government has been organized, with Professor Don B. Leiffer as chairman; also a bureau of public administration which will begin operations this autumn.

Professor Jasper B. Shannon, of the University of Kentucky, is teaching at the University of Tennessee during the current second summer term.

At commencement exercises of June 8, Dickinson College conferred on Professor Alpheus T. Mason, of Princeton University, the honorary degree of doctor of letters.

Professor George A. Graham, chairman of the politics department at Princeton University, conducted a round-table on "Inter-Agency Committees in the Federal Service" at the annual meeting of the American Society of Public Administration in Washington on March 15.

Professor David Fellman, of the University of Nebraska, has accepted a professorship at the University of Wisconsin, where his work will be concentrated in the field of American institutions.

Visiting lecturers at the University of Illinois this summer have included Professors Frank H. Jonas, of the University of Utah, John H. Leek, of the University of Oklahoma, and Hollis W. Barber, recently of Tulane University, but now joining the staff of the University of Illinois for work in the Chicago Undergraduate Division.

The University of Maryland announces the appointment of Dr. Elwyn A. Mauck, formerly of the University of North Carolina and recently on assignment with the War Assets Administration at Nashville, Tennessee, to a professorship; also of Mr. Edward G. Misey, graduate student recently at the University of Wisconsin and now at Columbia University, as instructor.

Professor Benjamin E. Lippincott, of the University of Minnesota, will be on sabbatical leave during the academic year 1947–48. At the same institution, Dr. Edward W. Weidner has been promoted to an assistant professorship.

Dr. R. W. Van Wagenen, who served with the Allied Secretariat of the Control Council with the rank of Lieutenant Colonel, has been appointed associate professor at Duke University and will assume the position in September. During the past year, Dr. Van Wagenen has been engaged as deputy United States secretary to the United States member of the Secretariat.

At the University of Pennsylvania, Dr. E. B. Cale has been promoted to an associate professorship.

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Drs. Manfred C. Vernon, of Stanford University, and Roger S. Abbott, of the University of California, have been appointed instructors at the University of Michigan.

Dr. J. Austin Ranney, who is completing his work for the doctorate at Yale University, has been appointed instructor at the University of Illinois.

Mr. George F. Rohrlich, Office of Intelligence Research, Department of State, formerly with OSS and Sweet Briar College, has been appointed chief of the Economic Analysis Branch, Social Security and Insurance Division, CINCFE, Tokyo.

Mr. Currin Shields, graduate student formerly at the University of Wisconsin and later at Yale University, is teaching at Boston University during the present summer.

Dr. Victor A. Thompson, recently an instructor at the University of Texas, has been appointed to an assistant professorship at the Illinois Institute of Technology.

Professor Robert H. Connery, of Stanford University, held a summer appointment in the Graduate School of Columbia University, and was occupied also with completing a research assignment for the office of the Assistant Secretary of the Navy.

Dr. Russell Hunt Fifield, of the United States Foreign Service, has been appointed assistant professor at the University of Michigan.

At the University of Illinois, Dr. Phillip Monypenny, during the past year at the University of Puerto Rico as a member of the PAS visiting team, has been added to the staff as a visiting professor.

For purposes of summer teaching in 1947, Professors Winston W. Crouch, of U.C.L.A., and Don B. Leiffer, of Boston University, exchanged posts.

Mr. Philip Pendleton, lecturer in political science at the University of Pennsylvania, has been appointed University treasurer.

Dr. Maurice Klain, formerly of Connecticut College, has received an appointment at Amherst College.

Professor William T. R. Fox, of Yale University, taught at Harvard University during the recent summer session.

New appointments at Yale University include Dr. Willmoore Kendall, at present chairman of the Latin American Division of the Central In-

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telligence Group in the Department of State, as associate professor; Dr. Fred V. Cahill, of the University of Oregon, as assistant professor; and Dr. M. Henry Wells, a recent Ph.D. of Yale, as instructor.

Dr. Djang Chu, a distinguished younger Chinese public administrator, was the principal speaker at a private conference on the China problem held by the School of Advanced International Studies, Washington, D. C., between April 29 and May 3, with Dr. Paul M. A. Linebarger presiding. Dr. Djang discussed "China's Post-War Crises," "Social Changes Underlying Political Developments," "Democratization and Unification," "The New Constitution," and "Political Factions and the Prospect of Peace."

Dr. Totton J. Anderson, who served during the war as Lieutenant Colonel in the United States Army Air Forces with an operational bomb group in the European Theater, and who returned recently to his position as dean of admissions and records at the Ventura Junior College, has been appointed associate professor at the University of Southern California.

At the University of Utah, Drs. Charles P. Schleicher and G. Homer Durham have been advanced to full professorships, and Dr. Frank H. Jonas, formerly of the Utah State Agricultural College, has accepted a position as associate professor.

Dr. Norman D. Palmer, formerly of Colby College, has been appointed to an associate professorship at the University of Pennsylvania.

Dr. Thomas C. Donnelly, of the University of New Mexico, was appointed dean of the college of arts and sciences of the University on July 1, 1947. Dr. Miguel Jorrin has been advanced from an associate professorship to a full professorship; Dr. Charles B. Judah, Jr., has been appointed associate professor; and Dr. Frederick C. Irion, formerly of Appleton College, assistant professor. Mr. J. E. Holmes will assume direction of the department's division of research for the coming year.

A conference on the Middle East was held at New York University June 5–6, with more than two hundred persons in attendance. Among those on the program was Professor Clyde Eagleton, discussing "Straits and Strategy."

A state Municipal Finance Officers Association has been formed in Tennessee, with the Bureau of Public Administration at the University of Tennessee serving as its secretariat.

Under direction of Professor Joseph Dunner, an Institute of International Affairs was held at Grinnell College, July 10–20. Professors Wilson L. Godshall, of Lehigh University, and Arnold J. Zurcher, of New York University, together with an umber of other guest lecturers, partic-

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ipated, and subjects dealt with included the Far East, Latin America, Soviet Russia, and problems of international organization.

Resuming an activity interrupted by the war, the extension division of the University of Florida, in conjunction with the Florida City Managers Association, held an institute for the city managers of the state at Gainesville June 12–14. Professor M. J. Dauer helped arrange the program; Professor J. E. Dovell participated in a session devoted to public administration and personnel management; and Mr. Clarence E. Ridley, director of the International City Managers Association, led discussions of city-manager problems in general, but with particular reference to Florida.

The 1947 annual conference of the Governmental Research Association, to be held in New York City October 8–11, is being planned to commemorate "Forty Years of Governmental Research."

The desperate and continued need for American publications to serve as tools of physical and intellectual reconstruction abroad has been made vividly apparent by appeals from men of learning in many lands, and from Americans who have seen this need. The American Book Center for War Devastated Libraries, continuing its program through 1947, is making a renewed appeal for donations of books and periodicals, for publications of intellectual merit in all fields, and particularly for volumes published in the last ten years. Especially useful would be complete or incomplete files of this REVIEW. Contributions should be shipped to the American Book Center, care of the Library of Congress, Washington 25, D. C., freight prepaid; or write to the Book Center for further information.

At the University of Utah, the Institute of Government has announced a program of graduate training and special certificates in political science. In coöperation with the University departments of instruction, graduate degrees may be earned in conjunction with a program leading to special certificates in public administration, municipal administration, international relations, and American foreign policy. Particular emphasis is being placed on the opportunity to acquire a master's degree in political science or in economics with a special certificate in public administration.

Claremont College, School for Men, was incorporated separately in March of this year as Claremont Men's College—a part of the Associated Colleges at Claremont, including Pomona and Scripps. The new college is devoted to a liberal arts program, with special emphasis on business and public administration. Political scientists will be interested in knowing that Dr. Russell M. Story, former president of Claremont College, and longer a distinguished teacher of political science, worked out the plan for this college before his death in 1942. Political scientists on the faculty of

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the new college include Professors George C. S. Benson and Gerald I. Jordan.

The Abraham Lincoln Association, First National Bank Building, Springfield, Illinois, solicits information concerning the present private ownership and location of any document composed by Abraham Lincoln, whether or not it has hitherto been published. Documents in public institutions are readily accessible, but many of those held by individuals have not been located to date. The preparation of a complete edition of Lincoln's writings from original sources will be greatly facilitated by information leading to procurement of photostatic copies of documents held by private individuals. Acknowledgment of assistance will be made upon publication.

The Cleveland Council on World Affairs is expanding its "internship" program of the past two years to an in-service training program. Through the coöperation of the Carnegie Corporation of New York, the Council will provide a year's training and experience for two trainees in the administration and operation of community education in world affairs. The training program will be complete in every detail, giving the trainee experience in all aspects of community organization with respect to adult education in world affairs. The purpose of the program is to provide thorough preparation for a professional career in this field. It is expected that after their period of training, the men will organize, develop, and administer similar projects elsewhere in the United States. Inquiries and applications should be addressed to Shepherd L. Witman, executive director, Council on World Affairs, 922 Society for Savings Building, Cleveland 14, Ohio.

The Carnegie Corporation of New York has granted $250,000 for an experimental five-year program to develop four permanent university study centers on Latin America. The project will be carried out jointly by the University of North Carolina, the University of Texas, the Tulane University of Louisiana, and Vanderbilt University, with each institution concentrating on a definite geographical area. North Carolina will focus on area studies of Spanish South America, Texas will emphasize Mexico, Tulane will carry on a Middle American program, and Vanderbilt plans to establish an institute of South American studies, emphasizing Brazil. Designed to make available comprehensive knowledge of Latin America to students, teachers, business men, and government officials, the program will provide in each center a strengthened undergraduate curriculum, broader facilities for graduate work, and an expansion of library resources. For business men, missionaries, and other non-student groups, the University of North Carolina, as a part of its expansion plan, will experiment with

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intensive language courses to be given by instructors from Latin America.

At the National Conference on UNESCO held in Philadelphia on March 24–26, 1947, a group of social scientists met under the chairmanship of Dr. Rensis Likert, of the Survey Research Center of the University of Michigan, to discuss the place of social research in UNESCO'S future plans. As a result of the meeting, formal recommendations were drawn up and submitted to the National Commission urging that group to make greater use of the tools which social science has to offer through three major activities: (1) research on projects concerned with social tensions leading to war; (2) international exchange of scientific findings, personnel, and suggestions; and (3) counseling on operational and action research in in order to make techniques and resources available for the planning and evaluation of proposed and active projects of the National Commission of UNESCO. The group strongly recommended that in addition to the Section on Social Tensions the following be established: (1) a Section on the Social Sciences, to function on the international exchange of publications, personnel, etc., similar to the manner in which the Section on the Natural Sciences is functioning, and (2) a committee of social scientists engaged primarily in human relations research to advise the National Commission on matters of action research and to assist in making research facilities available when requested for any part of the program of the National Commission of UNESCO. The panel was composed of Rensis Likert (*chairman*), Robert C. Angell, Jerome S. Bruner, Dorwin Cartwright, Richard D. Crutchfield, Wayne Dennis, Clyde Hart, David Krech, Alfred McC. Lee, H. Scudder Mekeel, Donald MacKinnon, and Goodwin Watson.

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DOCTORAL DISSERTATIONS IN POLITICAL SCIENCE

IN PREPARATION AT AMERICAN UNIVERSITIES[1]

COMPILED BY DAVID FELLMAN
University of Wisconsin

POLITICAL PHILOSOPHY AND PSYCHOLOGY

William M. Barr; Litt.B., Rutgers, 1928; A.M., Columbia, 1936. The Philosophy of Woodrow Wilson. *Columbia.*

George Cochrane Bryan; A.B., Williams, 1942. Ideas of Leadership in American Political Thought. *Harvard.*

[1] Similar lists have been printed in the REVIEW as follows: V, 456 (1911); VI, 464 (1912); VII, 689 (1913); VIII, 488 (1914); XIV, 155 (1920); XVI, 497 (1922); XIX, 171 (1925); XX, 660 (1926); XXI, 645 (1927); XXII, 736 (1928); XXIII, 795 (1929); XXIV, 799 (1930); XXV, 798 (1931); XXVI, 769 (1932); XXVII, 680 (1933); XXVIII, 766 (1934); XXIX, 713 (1935); XXX, 811 (1936); XXXI, 772 (1937); XXXII, 796 (1938); XXXIII, 732 (1939); XXXIV, 767 (1940); XXXV, 752 (1941); XXXVI, 734 (1942); XXXVII, 706 (1943); XXXVIII, 766 (1944); XXXIX, 779 (1945); XL, 775 (1946).

Items which appeared in the August, 1946, list are in general classified under the same headings in the present list, and new items have been assimilated to the 1946 classification as far as possible. In cases where classification of an item has been suggested by the institution concerned, the suggestion has been followed. Each item is listed under one classification only. Names starred are merely carried over from the 1946 list, no more recent data having been received.

The lists printed in the REVIEW are based on information from departments giving graduate instruction in political science. Often dissertations are in progress in departments of economics, history, sociology, etc., which overlap or supplement dissertations in preparation in political science. Attention is called especially to the following lists: "Check List of Current Researches in Public Administration Reported to the Committee on Public Administration, Social Science Research Council" (mimeographed, most recent edition, January, 1943); "Doctoral Dissertations in Political Economy in Progress in American Colleges and Universities," in the *American Economic Review;* "List of Doctoral Dissertations in History Now in Progress," formerly published by the Division of Historical Research, Carnegie Institution of Washington, but since the 1938 issue as a Supplement to the *American Historical Review;* and "Higher Degrees in Sociology," in the *American Journal of Sociology.* Usually one list is published each year. There are, in addition, the "List of American Doctoral Dissertations Printed in 1938," the most recent of an annual series published by the Library of Congress; and Edward A. Henry's "Doctoral Dissertations Accepted by American Universities, 1945–1946," the thirteenth of a series beginning in 1933–1934, compiled for the Association of Research Libraries. Consult, for other lists, T. R. Palfrey and H. E. Coleman, Jr., "Guide to Bibliographies of Theses, United States and Canada" (Chicago, American Library Association, 2nd ed., 1940).

It may be of interest to note that whereas the 1946 list had 289 names, the number of items in this year's compilation is 359.

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Samuel I. Clark; A.B., Chicago, 1943. The Political Theory of Don Luigi Sturzo. *Chicago.*

Raymond Francis Cour, C.S.C.; A.B., Notre Dame, 1937; A.M., *ibid.*, 1943. Catholic Action and Politics. *Notre Dame.*

Charles Sebastian La Cugna; A.B., Manhattan College, 1937; A.M., Fordham, 1944. The Political Thought of Don Luigi Sturzo. *Notre Dame.*

Richard Eugene Curl; A.B., Ohio State, 1939; A.M., *ibid.*, 1940. The Impact of War on Government Publicity. *Princeton.*

Howard E. Dean; A.B., U.C.L.A., 1939. A Critique of the Political Philosophy of Walter Lippmann. *Columbia.*

Alfred DeGrazia; A.B., Chicago, 1939. American Ideas on Representation. *Chicago.*

Sebastian DeGrazia; A.B., Chicago, 1939. Anomia: Some Applications to the American Technological Culture. *Chicago.*

Susan H. Devine; A.B., Kansas City, 1938; A.M., *ibid.*, 1940. The Political and Social Philosophy of Herbert Hoover. *Pennsylvania.*

Karl Wolfgang Deutsch; Dr. of Law and Political Science, Prague, 1938; A.M., Harvard, 1941. The Economic Factor in Nationalism: A Technique of Enquiry Applied to Some Successors of Central Europe. *Harvard.*

Cletus Francis Dirksen, C.PP.S.; A.B., St. Joseph's College, Collegeville, Indiana, 1926; A.M., Catholic University, 1941. Church and State According to Richard Hooker. *Notre Dame.*

Thelma A. Dreis; B.S., Minnesota, 1923; A.M., *ibid.*, 1930. A Study of the Public Opinion Poll as an Instrument in Administration, with Special Reference to Food and Nutrition Polls. *American.*

Leslie W. Dunbar; A.M., Cornell, 1946. The Political Theory of T. H. Green. *Cornell.*

Emily L. Ehle; A.B., Smith, 1934; A.M., Pennsylvania, 1939. The Analysis of Leadership Opinion: An Evaluation. *Pennsylvania.*

Dominic Elder, C.S.C.; A.B., Notre Dame, 1936; A.M., *ibid.*, 1942. Thomas Paine and his Philosophy of the Common Man. *Notre Dame.*

Samuel Fox; Ph.B., Chicago, 1924. Majority Rule and Minority Representation as Provided by the Electoral System of the Limited Vote. *Notre Dame.*

Robert O. Gibbon; A.B., Kansas, 1943; A.M., *ibid.*, 1945. The Relation of the State to the Economic Order in Greek and Roman Political Thought; A Study of Greek and Roman Political Thinkers. *Minnesota.*

Frank Grace; A.B., Vanderbilt, 1939; A.M., Louisiana, 1940. The Concept of Property in Modern Christian Thought. *Illinois.*

Alan Pendleton Grimes; A.B., North Carolina, 1941; A.M., *ibid.*, 1946. The *Nation* Magazine: A Case Study in the Development of American Political Liberalism. *North Carolina.*

Norman B. Hannah; A.B., Illinois, 1941; A.M., Louisiana State, 1943. The Purpose of the State in Greek Political Theory. *Minnesota.*

Martin Joseph Hillenbrand; A.B., Dayton, 1937; A.M., Columbia, 1938. An Analysis of the Concept of Obligation. *Columbia.*

Max M. Kampelman; A.B., N.Y.U., 1940; LL.B., *ibid.*, 1945; A.M., Minnesota, 1946. The Political Philosophy of the C.I.O. *Minnesota.*

Cecilia Marie Kenyon; A.B., Oberlin, 1943; A.M., Radcliffe, 1945. Human Nature in American Political Thought. *Radcliffe.*

Mary H. Kirsten; A.B., Wisconsin, 1935. The Syndicated Commentators. *Chicago.*

Maurice J. Klain; A.B., University of Omaha, 1940; A.M., Oberlin, 1941. The Small

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Property Owner as the Basis of a Free Society: Recent Exponents of a Jeffersonian Tradition. *Yale.*

Bernard Kronick; A.B., California, 1937. Political Ideas of Winston Churchill. *California.*

George A. Lanyi; B.Sc., University of London, 1937; A.M., Harvard, 1940. The Nationalism of Oliver Cromwell. *Harvard.*

Charles J. Lavery; A.B., University of Toronto, 1937; A.M., *ibid.*, 1940. St. Thomas on the Politics of Aristotle. *Chicago.*

George A. Lipsky; A.B., Washington (Seattle), 1938. The Political Values of John Quincy Adams. *California.*

H. Rowland Ludden; A.B., Colgate, 1943; A.M., Princeton, 1945. Informational Activities of the Department of State: Historical Development and Present Organization and Operations. *Princeton.*

Martin Michael McLaughlin; A.B., University of Portland, 1938; A.M., Notre Dame, 1941. Political Processes in American Student Activities. *Notre Dame.*

Thomas Francis Maher; A.B., St. Joseph's Seminary, Yonkers, 1936; A.M., Notre Dame, 1942. Population and Politics: The Political Aspects of Birth Control. *Notre Dame.*

Milton R. Merrill; B.S., Utah State College, 1925; A.M., Columbia, 1932. The Public Career of Reed Smoot. *Columbia.*

G. Theodore Mitau; A.B., Macalaster College, 1940; A.M., Minnesota, 1942. The Political Ideology of James Bryce and its Influence on American Political Science. *Minnesota.*

Ilse Eichelgrun Nelson; B.S., Anderson College, 1942; A.M., Butler, 1943. The Practical Aspects of Max Weber's Political Philosophy: Max Weber's Attitude toward the Political Problems of Germany, 1885–1921. *Chicago.*

Charles R. Nixon; A.B., Oberlin, 1939. The Concept of Civil Liberty: Its Meaning and Development in the United States. *Cornell.*

Simon Noveck; A.B., Yeshiva College, 1936. History of the Democratic Idea in America, 1765–1801. *Columbia.*

George A. Peek; A.B., Virginia, 1940; A.M., *ibid.*, 1941. The Political Philosophy of John Adams. *Virginia.*

William Broderick Pendergast; A.B., Notre Dame, 1937; A.M., *ibid.*, 1938; li^{ère} Licence en Sciences Politiques et Sociales, Louvain (Belgium), 1939. American Ideas on the Limits of the Authority of Government. *Chicago.*

Ithiel DeSola Pool; A.B., Chicago, 1938; A.M., *ibid.*, 1939. Economic Conditions of Political Freedom. *Chicago.*

Leonard D. Quinlan; A.B., University of Toronto, 1940; A.M., *ibid.*, 1942. Political Philosophy of Suarez. *Chicago.*

Marcos A. Ramirez; A.B., University of Puerto Rico, 1940; LL.B., *ibid.*, 1942; LL.M., Harvard, 1943; A.M., *ibid.*, 1945. Democracy and Revolution. *Harvard.*

Austin Ranney; B.S., Northwestern, 1941; A.M., Oregon, 1942. Political Parties in the American System: Theories of their Function. *Yale.*

Charles E. Rogers; A.B., Oklahoma, 1914; M.S., Kansas State College, 1926; A.M., Stanford, 1932. An Examination of the Political Attitudes of the *Kansas City Star*, 1880–1915. *Minnesota.*

Bruno Paul Schlesinger; Absolutorium in Law, Vienna, 1937. Christopher Dawson on the Modern Political Crisis. *Notre Dame.*

Willis Harlow Shapley; A.B., Chicago, 1938. General Theory of Planning. *Chicago.*

Alexander Smetana; B.S., Lafayette, 1936; A.M., Catholic University, 1941. A

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Comparative Analysis of the Best Form of Government According to Aristotle, Cicero, Aquinas, and Locke. *Catholic University.*

Charles Louis Smith; B.S., George Peabody College, 1927; A.M., Vanderbilt, 1930. Civil-Military Relations. *Chicago.*

David Spitz; B.S.S., C.C.N.Y., 1937; A.M., Columbia, 1939. American Anti-Democratic Thought, 1915–1945. *Columbia.*

Robert L. Stern; A.B., New York State College for Teachers, 1935. Study of Predictions of Newspaper Columnists in the Newspapers of 1934. *Syracuse.*

Joseph Teplin; Ph.B., Chicago, 1934. Administrative Theories of Theodore Roosevelt. *Chicago.*

Harry C. Thomson; A.B., Allegheny, 1933; A.M., Harvard, 1934. The American Doctrine of the Separation of Powers. *Harvard.*

Paul G. Willis; A.B., Marshall College, 1937; A.M., Louisiana State, 1939. Political Libel in the United States. *Indiana.*

Hubert H. Wilson; B.S., Springfield College, 1933; A.M., Clark, 1939. Standards of Public Representatives. *Wisconsin.*

GOVERNMENT AND POLITICS OF THE UNITED STATES AND ITS DEPENDENCIES

Roger S. Abbott; A.B., College of the Pacific, 1938; A.M., California, 1939. The Investigation and Suppression of Subversive Activity by the Federal Government Since 1930. *California.*

Stephen Kemp Bailey; A.B., Hiram College, 1937; A.B., Oxon., 1939; A.M., Harvard, 1943; A.M., Oxon., 1946. S. 380—A Study in the Politics of Full Employment. *Harvard.*

Benjamin Baker; B.S., C.C.N.Y., 1935; A.M., Columbia, 1940. Food Controls in World War II. *Columbia.*

Roscoe Baker; A.B., Berea College, 1929; A.M., Ohio State, 1933. The Foreign Policy of the American Legion. *Northwestern.*

Arthur H. Benedict; A.B., Marietta, 1934; A.M., Syracuse, 1935. Federal Centralization since 1933. *Ohio State.*

Hillman M. Bishop; A.B., Columbia, 1926. Rhode Island and the Federal Constitution. *Columbia.*

James MacGregor Burns; A.B., Williams, 1939; A.M., Harvard, 1947. Congress and the Formation of Economic Policies; Six Case Studies. *Harvard.*

Edward M. Caine; B.B.A., City College of New York, 1940; M.P.A., New York University, 1947. The Civil Aëronautics Board. *N.Y.U.*

Dorothy C. Carmack; A.B., Southern California, 1943; A.M., Northwestern, 1946. A Decade of the CIO in National Politics, 1936–1946. *Johns Hopkins.*

Robert Burns Dishman; A.B., Missouri, 1939; A.M., *ibid.*, 1940. The President and Public Interest in Labor Disputes. *Princeton.*

Marvin Downey; A.B., Virginia, 1931; A.M., *ibid.*, 1934. The Committee on Rules of the U. S. House of Representatives. *Chicago.*

Robert E. Elder; A.B., Indiana State Teachers College, 1936; A.M., Chicago, 1937. History of Demobilization of the United States Navy Women's Reserve, 1945–46. *Chicago.*

Robert Engler; B.S.S., C.C.N.Y., 1942; A.M., Wisconsin, 1946. Some Problems of Military Government in the Rehabilitation of a German City. *Wisconsin.*

David Gregg Farrelly; B.S., Springfield College, 1937; A.M., Pittsburgh, 1940. The Senate Judiciary Committee. *Princeton.*

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LeRoy Craig Ferguson; A.B., Miami, 1937; A.M., Ohio State, 1939. The Quakers in American Politics. *Ohio State.*

Raymond H. Gusteson; A.B., Morningside College, 1942; A.M., Syracuse, 1945. Violence in Labor Disputes. *Syracuse.*

John D. Hall; A.B., Union, 1936; A.M., Syracuse, 1938. The Administration of U. S. Territories and Island Possessions. *Syracuse.*

Marston Headley; A.B., Carleton College, 1938; A.M., Harvard, 1940. The Rôle of the States in the Administration of a National System of Public Employment Offices. *Harvard.*

Donald C. Herzberg; A.B., Connecticut Wesleyan, 1946. Removal of Public Officers. *Syracuse.*

Jack E. Holmes; A.B., Wyoming, 1939; A.M., *ibid.*, 1945. Politics of National Farmers Union. *Chicago.*

Schuyler Dean Hoslett; A.B., Park College, 1940; A.M., Ohio State, 1942; M.P.A., Harvard, 1946. Employee Relations in Government and Industry. *Ohio State.*

Burke Inlow; A.B., State College of Washington, 1937; A.M., California, 1940. The Patent Grant—The Evolution of a Property Right. *Johns Hopkins.*

Richard B. Johnson; A.B., Lehigh, 1941; A.M., Pennsylvania, 1942. Governmental Seizure as a Solution for Labor Disputes in Basic Industries. *Pennsylvania.*

Merle Kling; A.B., Washington, 1940; A.M., *ibid.*, 1941. Missouri's Attitude on Foreign Policies as Expressed by her Congressmen. *Washington* (St. Louis).

Daniel S. McHargue; A.B., U.C.L.A., 1938; A.M., *ibid.*, 1941. Factors and Influences Affecting Appointments to the U. S. Supreme Court. *U.C.L.A.*

Jerome Machin; B.S.S., C.C.N.Y., 1935. A Study in Protest Politics. *Syracuse.*

Edwin M. Martin; A.B., Northwestern, 1929. Politico-Economic Phases of the Allied Occupation of Japan. *Northwestern.*

Robert Earl Martin; A.B., Howard, 1936; A.M., *ibid.*, 1938. Negro-White Participation in the A.A.A. Cotton Referendum in North Carolina, Virginia, and South Carolina. *Chicago.*

William Alexander Mitchell; B.S., Clemson Agricultural College, 1938; A.M., North Carolina, 1940; A.M., Princeton, 1942. An Analysis of Certain Aspects of the Rôle of Government in Education. *Princeton.*

Rita Weber Nealon; A.B., Hunter College, 1940; A.M., N.Y.U., 1946. The Contribution of the Attorney-General to the Development of a Strong Executive. *New York University.*

Wallace J. Parks; A.B., Williams, 1932; LL.B., George Washington, 1937. Federal Import Control. *Columbia.*

A. Edward Patmos; A.B., N.Y.U., 1935; A.M., *ibid.*, 1936. Some Recent Attempts of Non-Political Organizations to Influence Federal Legislation. *New York University.*

Jack Walter Peltason; A.B., Missouri, 1943; A.M., *ibid.*, 1944; A.M., Princeton, 1946. Civil-Military Relations in the Handling of the War Production Program, 1944–1945. *Princeton.*

Louis A. Radelet; A.B., Notre Dame, 1939. The Presidency and the Crisis; Powers of the Office from Pearl Harbor to V-J Day. *Notre Dame.*

Norman Franklin Reber; A.B., Elizabethtown College, 1930; A.M., Pennsylvania, 1935. Federal Measures to Control Agricultural Production, 1933–1940; A Critical Study of a National Policy. *Pennsylvania.*

Fred W. Riggs; A.B., Illinois, 1938; A.M., Tufts (Fletcher School), 1941. Influence of Pressure Groups on Chinese Exclusion and its Repeal. *Columbia.*

William H. Riker; A.B., DePauw, 1942. The CIO in Politics, 1936–46. *Harvard.*

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Richard L. Seggel; A.B., Princeton, 1936; A.M., *ibid.*, 1938. Government and the Veteran. *Princeton.*

Ruth Caridad Silva; A.B., Michigan, 1943; A.M., *ibid.*, 1943. Presidential Succession. *Michigan.*

Samuel R. Solomon; A.B., Syracuse, 1930; A.M., *ibid.*, 1931. Uses of Executive Veto Power. *Syracuse.*

Julius Turner; A.B., Colgate, 1943. Determinants of Voting Behavior in Legislative Bodies. *Johns Hopkins.*

Russell G. Whitesel; A.B., Minnesota, 1939; A.M., *ibid.*, 1940. The Power of Congress to Remove Federal Officers. *Cornell.*

Violet Elizabeth Wurfel; A.B., Pomona, 1928; A.M., Virginia, 1945. American Implementation of Philippine Independence (1946–1947): A Case Study in the Granting of Colonial Independence. *Virginia.*

Charles Young; B.S., Brooklyn, 1934. The Rider Method of Legislation. *New York University.*

Raymond W. Young; A.B., New Jersey State Teachers College at Montclair, 1945; A.M., New Jersey State University, New Brunswick, 1946. Norman Thomas: A Study in Political Leadership. *Johns Hopkins.*

CONSTITUTIONAL AND ADMINISTRATIVE LAW IN THE UNITED STATES

Paul Beckett; A.B., Monmouth College, 1935; A.M., Illinois, 1938. Judicial Review of Statutes in California, 1880–1910. *U.C.L.A.*

H. Paul Castleberry; A.B., Texas Technological College, 1941; A.M., *ibid.*, 1942. Legal and Political Questions in the Jurisprudence of the United States Supreme Court. *Chicago.*

Harold P. Christensen; A.B., Iowa, 1939; A.M., *ibid.*, 1940. The National War Labor Board: Its Jurisdiction and Non-Wage Policies. *Iowa.*

Robert Fairchild Cushman; A.B., Cornell, 1940. Religious Liberty and Equality in American Constitutional Law. *Cornell.*

Frederyc R. Darby; A.B., Occidental College, 1934; A.M., *ibid.*, 1935. Welfare Clause of the Constitution. *California.*

Paul Dolan; A.B., Pennsylvania, 1933; A.M., *ibid.*, 1936. Law-Making in State Regulating Agencies in Delaware. *Johns Hopkins.*

Delavan P. Evans; A.B., Occidental, 1933. The Use of the Concept of Inherent Powers by the Supreme Court of the United States. *California.*

G. James Fleming; A.B., Wisconsin, 1931; A.M., Pennsylvania, 1944. Administrative Adjudication, with Special Reference to Fair Employment Practices. *Pennsylvania.*

Walter Gouch; A.B., St. Paul's College, 1936; A.M., Catholic University, 1944. Judicial Philosophy and Decisions of Justice Cardozo. *Johns Hopkins.*

Howard Devon Hamilton; B.S., Purdue, 1942. Legislative and Judicial History of the Thirteenth Amendment. *Illinois.*

Francis H. Heller; J.U.C., Vienna; LL.B., Virginia, 1941. The Supreme Court and Treaties. *Virginia.*

Samuel Hendel; LL.B., Brooklyn Law School, 1930; B.S.S., C.C.N.Y., 1936. Constitutional Doctrines of Charles Evans Hughes. *Columbia.*

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BOOK REVIEWS AND NOTICES

The Web of Government. By R. M. MacIver. (New York: The Macmillan Company. 1947. Pp. x, 498. $4.50.)

If it be said that Professor MacIver's book is a systematic study of politics, the reader may be led to think of it as similar to the *Leviathan*, the *Second Treatise*, or the *Social Contract*. It resembles these only in that it deals with many of the same persistent problems, even if in a different setting. It does not have their sharp clarity of focus, nor the dedication to a distinct and easily labelled doctrine which helps to give them their effectiveness as documents of persuasion. Compared to them, it is diffuse, learned, balanced. It is, that is to say, an academic performance; although this characterization should not cause American scholars to classify it with such wooden treatises as Woolsey's *Political Science* or Wilson's *The State;* nor does Mr. MacIver share Burgess' cantankerous insistence that all institutions fit his rigid definitions; and certainly it does not have the utter aridity of many lesser treatises of the nineteenth century. It is far superior to all of these. Among American writings, it seems to me most nearly comparable to the systematic books of Francis Lieber, and only incidentally because Mr. MacIver holds the Lieber Professorship at Columbia, where Lieber was one of his eminent predecessors.

Like Lieber's books, this one reflects not only great learning but also long reflection. No brief summary could possibly indicate adequately the range of subjects discussed under its five headings: "The Emergence of Government," "The Bases of Authority," "The Forms of Government, "The Transformations of Government," and "Conclusions on the Theory of Government." It is unlikely that any one who reads carefully what Professor MacIver has to say about political myths and their uses, the nature and rôle of law, the nature of property and of power, status and class in different forms of society, or revolutions, will fail to encounter information and observations which are new to him.

The Web of Government has more relevance to the problems of its time than either of Lieber's systematic books. I think, too, that it is generally more realistic and more penetrating in its comments on the nature of social and political processes. It reflects its author's long study of sociology and cultural anthropology, as well as political history. But it does seem to me to be comparable to Lieber's works in its rather heavy style and its bookishness. Professor MacIver, except when dealing with international society, too often finds it necessary to discuss the writings of the classical political philosophers rather than deal directly with the question at issue—as they did. Those who have studied the books to which he refers will find the discussions interesting; for the comments are always intelli-

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gent and frequently throw new light on well-known materials. But I suspect that few persons who are not familiar with these writings will find it easy going. This, if true, is regrettable. Though the general point of view of the book is not unfamiliar, there are observations and comments on many subjects with which the citizen is concerned—even though he may not be conscious of it—which would increase his awareness both of their complexity and their urgency. But Professor MacIver has read and remembered too many books on political and social theory to make it possible for him to cut loose and write only about the subject at issue.

Except in the discussion of the international community, Professor MacIver's attitude is usually conventional. It seems to stem, that is to say, from traditional British liberalism. He ardently advocates a world order far stronger than the United Nations, but when he deals with the problems involved in the relation of government to economic and social life, he is, relatively, on the defensive. I, for one, have no difficulty in agreeing to the superiority of democratic, constitutional methods, but I was disappointed to find that the grand conclusion is little more than a plea to resist movements which seek to vest in governments power over the cultural life of the community. The argument is, I think, valid, but it does not go very far toward helping us to work out a philosophy for the world of fiercely competitive technologies and ideologies in which we live. I should be giving an entirely erroneous picture of the book, however, if I did not point out that Professor MacIver recognizes both the seriousness of the issue and the reasons for the growth of governmental intervention. He approves of planning and the service state, but it seemed to me that he so fears the results of collectivism that he draws back where he might have pushed the argument further to explore the means by which this apparently inevitable process can be kept both democratic and constitutional. The contrast between his impatience with the slow pace of development in the international sphere and his traditional and cautious approach to domestic problems is striking. The book will be read, widely I hope, not for an exposition of a new social or political philosophy, but because of the learning and the mature perspective which are to be found in its pages.

BENJAMIN F. WRIGHT.

Harvard University.

A History of American Philosophy. By HERBERT W. SCHNEIDER. (New York: Columbia University Press. 1946. Pp. xiv, 646. $4.50.)

Political scientists who have a poetic strain and those whose insight shows life to be an Armageddon between great ideas will have affection for this book if they come to read it. Those who are committed to institutional description, to the dynamics of the ordinary in politics, to an un-

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complicated positivism, and to the eighteenth-century idea of progress will find Schneider's masterly work remote from the classroom and unrelated to the purposes of this REVIEW. If Schneider is correct in his evaluation, there is, indeed, a sharp separation between American political theory and American philosophy. Yet if he is correct, there is also a relatedness that varies in its intensity from period to period, a fact that students of American intellectual history might well affirm while rejecting some of the author's interpretations of political writers. In general, as the volume progresses the separation between philosophy and political theory grows more distinct, though the background value of philosophy may be no less than in earlier periods of our history.

Schneider begins with a treatment of colonial Platonism and empiricism, a philosophical approach that merges easily into "the American Enlightenment." Studies in the rise of nationalism and democracy provide a backdrop for the examination of nineteenth-century Protestant orthodoxy and the transcendental view of life. The impact of nineteenth-century science and the imprint of evolutionism on theology and social ideas are given careful and extended treatment. Finally, the volume records with brilliance the history of the once powerful idealistic movement in American philosophy, and the gradual rise of "the American philosophy" of pragmatism. Since most American political scientists seem, consciously or not, to adhere to radical empiricism, or since as a result of Darwin's "natural selection" they are metaphysically children of Peirce, James, and Dewey, they might read Schneider to become more familiar with their inner selves.

It is useless, says the author, to seek for a "native tradition" in philosophy. One pervading impression arising from this work is that until recently American philosophy has been a development and variation on the theme of Calvinist, British, and German speculation. Hence, we have the justification of Schneider's emphasis on religious writings, the constant re-interpretation of British movements, and the whole course of idealism stemming from German thought beginning with Kant. Yet the author feels that "something genuinely new is brewing" (p. vii), though what it is he hesitates to prophesy. For "no enduring evaluation of what is living and what is dead in our tradition is possible" (p. ix). A powerful lesson for us is, I think, that political scientists must have a theory of intelligence, a central principle certainly in pragmatism. If evasion of this question is possible, escape is not in a valid science of politics, since such a theory is essential in organizing the intricacy of experience we seek to use for data

For political scientists, the volume would have been greatly strengthened by a brief but continuous treatment of political ideas, which would have been possible by shortening the lengthy quotations often used.

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Southern thought is given very sketchy treatment; some men who might well have been included are left out (e.g., Paul Elmer More); and the massive bibliographical apparatus may not be as valuable as a wider scope in subject-matter.

FRANCIS G. WILSON.

University of Illinois.

The Intellectual Adventure of Ancient Man; An Essay on Speculative Thought in the Ancient Near East. BY H. and H. A. FRANKFORT, JOHN A. WILSON, THORKILD JACOBSEN, and WILLIAM A. IRWIN. (Chicago: University of Chicago Press. 1946. Pp. vii, 401. $4.00.)

A typical history of political thought or political philosophy begins with a few apologetic remarks by the author about not being able to start farther back; he then plunges into the theories of Plato and his immediate Greek predecessors. As Professor McIlwain says (p. 3), "With Greece, then, we must begin."

It is wrong to assume, however, that the stream of speculative thought, or even of Western speculative thought on politics, began with the Hellenes. Long before there were any Greek city-states, there were established governments on a large scale in the Near East as well as in the Far East. It is unthinkable that even the most primitive men under government should not have speculated to some extent on government. The resentful young man sent out by the patriarch of the family or the headman of the village against his will to tend the flocks at night had long, lonesome hours and every provocation to speculate on political authority. His counterparts, thousands if not millions of them, would have been found in more advanced political systems among the civil servants, teachers, priests, and soldiers who served the régime, as well as among the many citizens who were being squeezed by the tax-gatherers. What was distinctive about Greek political thought was that it came nearer to our own time, was more mature, systematic, and voluminous, was the result of rather formal, advanced, and scientific investigation, and was written down in forms that men could study and also preserve for later generations. In short, political thought was not just beginning, but in deep and full stream, by the time of Plato and Aristotle.

The beginnings are forever lost. The primitive peoples that preceded the ancient civilizations left practically no records. Anthropologists have done much through their studies of recent and present-day primitive tribes to show us by analogy how the most ancient of primitive men may have thought, but the demonstration will always leave something to be desired. Between the time of the ancient primitive tribes that preceded the known ancient civilizations and the early Greeks lies the long but little-known experience of those ancient civilizations themselves. Several

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of these stretch backward from Aristotle's day more centuries than have elapsed since then.

The book here under review is an important, possibly a very important, contribution to the history of political speculation in ancient Egypt and Mesopotamia and among the ancient Hebrews. This reviewer has been led to read the book from cover to cover by nothing more nor less than an amateur's keen interest. He feels quite incompetent to pass critical judgment on the work. Only Orientalists may be the ones to try this, since all the authors are Orientalists at the University of Chicago. They bring to their work not only the results of their own researches and wide reading, but also insight, originality, and the ability to write interesting English. Behind their "essay," though not necessarily supporting all of their interpretations, lie the voluminous findings of numerous archaeologists and other scholars who have been investigating so intensively in recent decades the ancient civilizations of the Near East. The connections between the ideas found by the authors in those once-dominant societies and certain ideas in Western political thought are so numerous and interesting that it would be futile to try to summarize them here.

To whet the reader's appetite without satisfying it, here in brief are the contents of the book. Dr. John A. Wilson discusses the thought of ancient Egypt in three chapters—"The Nature of the Universe," "The Function of the State," and "The Values of Life." Dr. Thorkild Jacobsen contributes three chapters on Mesopotamia—"The Cosmos as a State," "The Function of the State," and "The Good Life." Dr. William A. Irwin discusses the thought of the ancient Hebrews in four chapters—"God," "Man," "Man in the World," and "Nation, Society, and Politics." Dr. H. and Mrs. H. A. Frankfort collaborate in producing an illuminating introduction, "Myth and Reality," and a helpful concluding chapter, "The Emancipation of Thought from Myth."

WILLIAM ANDERSON.

University of Minnesota.

Total War and the Constitution. By EDWARD S. CORWIN. (New York: ALFRED A. KNOPF. 1947. Pp. xiii, 182. $2.50.)

This book contains five lectures delivered by Professor Corwin in 1946 on the William W. Cook Foundation at the University of Michigan. It would have been difficult if not impossible to find a more competent person to discuss "Total War and the Constitution." A teacher for nearly a half-century, his productive scholarship has achieved preëminence for him in his field. In these lectures he sets forth conclusions announced in his earlier publications, predictions which later developments have verified, and interpretations of constitutional theory resulting from events preceding and during World War II.

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After brief but valuable reference to the significance of the atomic bomb for our industrial and constitutional structure, not only for wartime but also through peacetime, Professor Corwin deals with the War before the War. Tracing the evolution of the constitutional theory of the President's powers as set forth in detail in his *The President: Office and Powers*, published in 1940, he gives examples of the exercise of these powers by President Roosevelt during the period under consideration. At first, legislative coöperation was sought, but after Lend-Lease the "commander-in chief" clause of the Constitution was relied upon in presenting Congress with accomplished facts.

While the evolution of constitutional theory has vested the full war power in the national government, specific provisions of the Constitution place some restraint on governmental action. The author explains the effect of total war on those which result from the powers and structure of the national government, or are due to constitutional provisions safeguarding private rights. Limitations of space do not permit any discussion in detail of these important matters. As regards the former, the precedents of World War I were followed and augmented with consequent enormous increase of the President's powers exercised under delegation by Congress or by virtue of his inherent authority to act in the emergency created by war.

As concerns constitutional rights during World War II, the pattern established by its predecessor was followed, with the Supreme Court generally unwilling, in the presence of total war, to find no justification for the exercise of governmental power. The exception for freedom of speech and press was due to the policy of the Administration and prior decisions of the Court strengthening these civil liberties. In the Hawaiian Island cases, the Court held that martial law had been illegally established, but it sustained the President's executive order in the Japanese segregation cases where the emergency was not as great. The Court, moreover, upheld a provision of the Emergency Price Control Act taking away from persons criminally prosecuted for violation of the act, or of orders issued under its authority, the right to plead the unconstitutionality of the act or of such orders. And it tightened the law of treason as regards adhering to an enemy of the United States.

Under the title, "Total Peace and the Constitution," the author considers the questions involved in the ratification of the United Nations Charter and the enactment of the United Nations Participation Act and indicates the constitutional basis of the provision of the latter for placing armed forces at the disposal of the Security Council.

The final lecture is devoted to "The Postwar Constitution." Professor Corwin finds it to be a Constitution "*adapted to peacetime usages in an era whose primary demand upon government is no longer the protection of rights*

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but the assurance of security." The concepts of federalism and separation of powers which formerly operated as checks upon national governmental powers have largely disappeared from our Constitution as a result of the New Deal and World War II. The power of judicial review itself has been impaired, as the author predicted in 1934 in his *The Twilight of the Supreme Court,* and as he confirmed in 1941 in his *Constitutional Revolution, Ltd.*

Total War and the Constitution gives a realistic picture of the effect of emergencies and wars upon our Constitution. Though prepared primarily for students of law, the lectures appear in this excellent volume in a form that will interest and instruct laymen.

ISIDOR LOEB.

Washington University.

Lions Under the Throne. By CHARLES P. CURTIS, JR. (Boston: Houghton Mifflin Company. 1947. Pp. ix, 368. $3.50.)

In admonishing the judges to be "lions under the throne," this book seeks to define the allowable scope of judicial review in a political system which enthrones democracy. In Mr. Curtis' view, a correct understanding of the Supreme Court's function begins with the recognition of a basic fact: although in name a court of law, the Supreme Court, by virtue of the power of judicial review, has become in reality an organ of government which necessarily chooses between competing interests and competing policies. The Court's masquerade as a court of law is by no means a harmless foible. To maintain its disguise, the Court has phrased its essentially political decisions in the language of the law, the language of abstractions and absolutes. And beguiled by those legal abstractions and absolutes, judges of the Court have been encouraged to forget the restraint which democracy imposes upon the exercise of political power by an undemocratic agency. The consequences were writ large in the early New Deal cases wherein a hostile Court did not hesitate to defeat the aims of the people's representatives in the name of a rigidly absolutistic constitutional conceptualism.

Mr. Curtis believes that the "new "Court has a sounder conception of its real function, although the Jehovah's Witnesses cases move him to warn that Court against new judicial absolutes which destroy governmental power. In his opinion, judicial self-restraint is essential except "where the democratic process is itself attacked," and there "the Court should exercise less than no restraint." Self-restraint means subordination to the community of which the Court is merely a part. In the discharge of its function, the Court must impute to our philosophically neutral Constitution "the best current philosophy of the time." This philosophy must comprise, not the judges' own predilections, but the convictions, implied

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assumptions, and half-articulate principles of the community. "Out of a confusion of which we may be only half aware," the Court must, in the last analysis, "articulate our creed for the era."

The broadly and zestfully elaborated theme of Mr. Curtis' book is vastly stimulating but equally productive of doubts. The notion that courts of law and policy-making agencies are generically different institutions seems to rest upon one of those legalistic abstractions which Mr. Curtis deprecates. Courts of law perforce must choose between competing rules and analogies, and such choices necessarily turn upon policy-determinations. In constitutional cases, the underlying interests are usually weightier than in ordinary litigation, but the nature of the judicial choice is the same. One may likewise question the reality of the distinction between the absolutist and the (so to say) "relativist" schools of judges. All men tend to be "absolutist" in their devotion to cherished values. The powers of government are the symbols of values no less absolute in nature than those which are reflected in constitutional limitations. Certainly, the former values are not the less absolute for being merged with democratic dogma, itself the most common of absolutes and one which, incidentally, finds very limited sanction in the Constitution's language. Finally, the reader may ponder whether or not judicial review is substantially reconciled with democratic dogma by converting it into an instrument for authenticating and enforcing "our creed for the era." A skeptic will argue that the many-sided American creed offers even ampler scope for judicial predilections than the generalities of the constitutional text.

These and other questions posed by this book do not detract from its value. Its witty and vigorous argument will entertain and stimulate even those who doubt or dissent.

JOHN A. SCHROTH.

Princeton University.

Wilson; The Road to the White House. By ARTHUR S. LINK. (Princeton: Princeton University Press. 1947. Pp. xiii, 570. $5.00.)

This book, based on a scholarly investigation of a mass of material, much of it hitherto unused, adds considerably to our knowledge of the career of Woodrow Wilson before his election to the presidency of the United States in 1912.

Mr. Link regards the years of the Princeton presidency as among the most important in Wilson's life. He sees in this period a forecast of "the shape of things to come when Wilson was president of the United States." In each instance, Wilson drove ahead in the first years and accomplished great reforms, but he alienated friends, and his refusal to compromise led to near-disaster at Princeton and to the nation's undoing in the Senate fight over the League of Nations.

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In early life, Wilson was a conservative. In Mr. Link's opinion, his change to a progressive began in 1908 and extended over a two-year period. Forced after his nomination for governor of New Jersey to make a choice between conservatism and progressivism, Wilson joined the progressives. In this connection, Mr. Link compares Wilson's correspondence with George L. Record as having about the same decisive effect upon his subsequent political career as had Lincoln's Freeport debate with Douglas on that of Lincoln. It was the "first great milestone in Wilson's career as a liberal statesman."

Wilson's election as governor, his defiance of the political bosses of New Jersey, and his program of progressive legislation, added impetus to the movement to make him the presidential nominee in 1912. Mr. Link denies that Colonel House was the president-maker in 1911 and 1912. It is McCombs "who stands out as the most resourceful and energetic general of the campaign." Taking issue with those who have made McCombs "the chief whipping boy of the eulogistic Wilson biographers," Mr. Link asserts that "in spite of his faults of personality . . . it should be emphasized that McCombs was a loyal and indefatigable laborer in the Wilson cause and the chief source of strength of the Wilson campaign."

Leagued against Wilson were "editors, reactionary politicians and Wall Street financiers, demagogues and former Populists, and self-styled radicals." Mr. Link relates in detail the defection from the Wilson cause of Colonel Harvey, who, he declares, "stands convicted of utter and complete hypocrisy" in his attempt to expose Wilson as an "ingrate—an attempt in which Harvey managed to involve Henry Watterson.

The near-collapse of the movement to nominate Wilson for the presidency, and the upsurge of the Clark candidacy, combine to form an interesting chapter in Mr. Link's book He contends that one of the deciding factors in the Baltimore convention was an early bargain which Luke Lea, spokesman for the Wilson men in the credentials committee, made with Roger Sullivan, the Illinois Democratic boss, which assured Sullivan's dominance in the Illinois delegation and enabled him to cast the Illinois votes for Wilson at a crucial time in the balloting.

Mr. Link takes definite issue with those historians who have written that Byran's decision to vote for Wilson caused Wilson's nomination Admitting that Byran had a considerable share in achieving Wilson's nomination, Mr. Link declares that other influences and persons were just as important. Clark's landslide was headed off, not by Bryan's action, but because of the coöperative opposition of the Wilson and Underwood delegates. Wilson's nomination was the result of a combination of factors and of men, including those who as political bosses represented the forces against which Wilson was struggling.

In his account of the presidential campaign, Mr. Link lays stress on the meeting of Wilson and Louis D. Brandeis and on the latter's part in

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explaining to Wilson what he meant by "unregulated competition," which Wilson made the central theme of his later campaign speeches. Mr. Link asserts that Wilson's election was "as much a political revolution as was Jefferson's triumph over the Federalists in 1800." No one could doubt that Wilson's "concern for the general welfare was profound, and that regardless of how he came by his progressive principles he would see them through as leader of the American people."

The high standard of excellence established by this first of a series of volumes in which Mr. Link proposes to carry the story of Wilson to his death in 1924 gives promise of supplying us with a definitive account of the political career of Woodrow Wilson.

EVERETT S. BROWN.

University of Michigan.

President and Congress. By WILFRED E. BINKLEY. (New York: Alfred A. Knopf. 1947. Pp. viii, 312. $3.00.)

This book is an historical analysis of the struggle for supremacy between the executive and legislative branches of the federal government from 1789 down to 1947. It tells with authentic scholarship and absorbing interest the story of executive-legislative relationships from consideration of the problem in the Constitutional Convention (Chap. I) through the Second World War. In graphic style, Professor Binkley describes the recurring conflicts between President and Congress which are inherent in our system of separated powers. The swings of the political pendulum between alternating periods of presidential and congressional leadership are examined in thirteen readable chapters, followed by a final chapter setting forth the author's summary and conclusions.

Professor Binkley's chief objective in this book is to discover and describe just what American experience has been with our system of separated powers and how the perennial conflicts between the executive and legislative arms have been resolved during successive periods of our national history. He shows at the outset that the framers took pains to insure the independence of the executive branch, but failed to define its necessary relations to Congress. During the first decade, reflecting the coastal commercial and financial interests, the Federalists sought to resolve the dilemma through executive leadership by making the department heads a ministry and giving them the initiative in shaping legislation. Led by Thomas Jefferson, the agrarians were the champions of legislative supremacy. For twenty-five years, the Jeffersonian Republicans applied the doctrine of legislative sovereignty and reduced the presidency to a subordinate rôle.

During the Jacksonian period, the agrarian party reversed itself on the doctrine of congressional sovereignty. Andrew Jackson's election

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marked the emergence of the President as a "tribune of the people." His two terms witnessed a revolution in executive-legislative relationships, the resurgence of executive power, and subordination of the legislature. Jackson's view of the Executive prevailed thereafter until by 1860 it had become the supreme organ of the federal government. Meanwhile, the Whigs as successors of the Federalists and agents of the business interests, now that the threat of populism had passed to the presidency, also reversed their historic position and transferred their allegiance to the federal legislature. While the Whigs vainly sought to subordinate the Executive to congressional control, the Southern slavocracy came to depend for the protection of its peculiar institution on the control of the presidency.

Lincoln likewise played the rôle of a tribune of the people. In a series of daring ventures, he pushed the executive power to unprecedented lengths within the legislative sphere, disregarding law and constitution to save the nation. The ensuing reaction against the Executive was marked by the impeachment of President Johnson, the temporary hegemony of the Senate, the incompetence and corruption of the Grant administration, and a series of sensational conflicts in which Hayes successfully challenged and decisively repulsed the Senate in its effort to control the Executive.

As a firm believer in the separation of powers, Cleveland twice left the presidency locked in futile combat with Congress. McKinley, attaining the presidency after a long legislative career, integrated the two branches by cordial and conciliatory relations with Congress. Theodore Roosevelt, through the give and take of conferences with Speaker Cannon, achieved comparable results. But Taft was handicapped by his juristic conception of the presidency and the overthrow of the Speaker of the House.

Woodrow Wilson, who had criticized congressional government as he saw it operate in the 1880's, was an advocate of executive leadership and an enthusiast for the English parliamentary system. Conceiving of himself as prime minister, as much concerned with the guidance of legislation as with the execution of law, he put his theories into practice by addressing Congress in person and by conferring at the Capitol with congressional committees and members. However far-fetched it seemed, he succeeded for a season in rationalizing the American political process in terms of the parliamentary system.

World War I was followed by a reaction against the Wilsonian type of executive leadership. Three typical Republican presidents—Harding, Coolidge, Hoover—believing in the dogma of the independence of the legislature and viewing with suspicion a strong executive as a potential champion of the masses, abdicated leadership of the government and left the initiative and formulation of legislation to Congress alone.

Franklin D. Roosevelt, a disciple of Wilson with a lofty conception of the moral leadership of the presidency and a keen grasp of practical poli-

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tics, sought to coördinate the legislative and executive branches *via* informal White House conferences with congressional leaders, liberal distribution of patronage, and "must" legislation drafted in the departments. But Roosevelt's program of social legislation was eventually halted by a coalition of Northern Republicans and Southern Democrats. After World War II, the Republicans captured both houses and the political pendulum swung back to the leadership of a Congress reorganized and strengthened by the LaFollette-Monroney Act. Whether a deadlocked government would ensue, as some gloomy oracles prophesied, or the new legislative leadership would find the means to bridge the gap between Congress and the President at a perilous period in our national history, were questions whose answers remained wrapped in the womb of time.

Such, in sketchy outline, is Professor Binkley's exciting story. The whole history of the continuing struggle is here illuminated in vivid detail from Federalist days down through the Second World War. The author concludes that the problem of integrating the executive and legislative branches remains unsolved. He rejects the parliamentary solution as "out of the question in the United States in the foreseeable future." Within our traditional constitutional framework, he suggests as "feasible" reforms: better balanced representation of rural and urban populations in Congress through poll-tax repeal and reapportionment of congressional districts, and further strengthening of internal legislative organization and operation. Conflicts might be lessened if popular-leader presidents dealt with a Congress more truly representative of the entire electorate. Meanwhile, legislative delays and compromises are viewed as the safety valve of sectional disputes.

First published in 1937 as *The Powers of the President*, this book has been completely rewritten, revised, and brought up to date. Perhaps its chief contribution is its historical documentation of the thesis of Thomas K. Finletter and others that better techniques of collaboration between the President and Congress must be devised to overcome the inherited handicap of our system of separated powers and to keep the means and ends of American government in balance.

GEORGE B. GALLOWAY.

Legislative Reference Service,
Library of Congress.

The Challenge of Industrial Relations. By SUMNER H. SLICHTER. (Ithaca: Cornell University Press. 1947. Pp. vii, 196. $2.50.)

Getting Along With Unions. By RUSSELL L. AND ELIZABETH B. GREENMAN. (New York: Harper and Brothers. 1947. Pp. ix, 158. $2.50.)

These brief and highly readable books are characterized by an approach welcome to political scientists. Instead of treating the economic and po-

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litical aspects of organized labor either as unrelated or as unalterably in conflict, they conceive of labor-management relations as the institutional framework of expectations, practices, and consequences that control the conduct of management and employees under conditions when collective bargaining is accepted. It is recognized that these relations have possibilities both for harmony and for discord, and that their economic effects may be at the same time both helpful and harmful from the viewpoint of the community. The significance of this approach from a public policy standpoint lies in the assumption that governmental intervention should be based upon prior knowledge of the rights and obligations, understandings and responsibilities, attitudes and frustrations, that are acted upon by unions and management in their *continuing* relations with each other. These relations create, but they also delimit and define, the issues and problems requiring public regulation or control.

The Greenmans do not attempt to evaluate our national labor policies, nor do they ask what these ought to be. Their book is frankly presented as a useful guide to sound practices and standards for personnel directors, factory superintendents, and foremen interested in collective bargaining techniques. Writing from the standpoint of an industrial manager, the authors analyze the collective bargaining process, the motives and objectives of unions in bargaining, technical factors in management strategy; they evaluate the arguments on both sides on such key issues as wages, seniority, union security, grievance procedure, and management responsibility; and they conclude with a terse and meaty discussion of the requirements of an adequate personnel program under a union agreement. Although union members and officials might disagree with the authors' statement of the union or management position on some points, they would find it useful in training their own stewards and committeemen, to say nothing of its value in formulating standards for the administration of a labor relations program.

Professor Slichter's book has a much broader purpose and audience. It is deliberately designed to foster public discussion, and to raise controversial questions of valuation and policy. He asks: With what problems and policies do the changes in union membership and power during the past fifteen years require the public to concern itself, in order to establish an adequate foundation for public control? He distinguishes four aspects of industrial relations: (1) the effects of unions upon the management of business enterprises, (2) the economic consequences of union wage policies, (3) the government of trade unions, (4) the problems of maintaining industrial peace arising from the processes of collective bargaining. Interestingly enough, on the first point he concludes that unions in general have brought about a better balance in the consideration given the interests of consumers and employees in the productive process, in stimulating

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management and promoting better managerial practices. On the economic effects of collective bargaining, however, he finds that the process of setting wages by the bargaining power of unions and employers "cannot be relied upon to give proper representation to the interest of the community in the highest possible standard of living and in the fair distribution of income." To remedy this, he offers two widely-differing suggestions. First, we need to accumulate and disseminate a more satisfactory body of knowledge concerning the economics of wages, to the end that such information on the part of the public would have salutary effects upon the temper and attitudes of the parties in wage negotiations. Second, an organization should develop within the labor movement "capable of representing the interests of labor as a whole." Failure of such an organization to materialize means that the government "might be compelled to undertake the formidable and hazardous task of enforcing a national wage policy which endeavored to control the wage structure."

In analyzing trade union government, Slichter strikes out against the "private club" conception of the trade union as a voluntary association. With respect to the protection of individual rights, he recommends statutory regulation of internal union affairs at three points, on the ground that "fundamental public interests" are involved: (1) provision that union admission requirements shall not discriminate against any qualified person on grounds of race, creed, or politics, (2) provision for individuals to appeal to the National Labor Relations Board in cases of unjust expulsion from their union, (3) provision for determination by the Board of charges against national unions that members of a local or district have been improperly deprived of the right to be represented by officers of their own choosing. Beyond these steps, the author, recognizing that outside regulation cannot remove the complex influences that lead to managerial and bureaucratic control of policy within unions, suggests that unions themselves resort to a rigorous separation of policy-making from policy-executing personnel, entrusting the former function to non-official executive boards elected by the membership for which employees and officials of the union would be ineligible. Unfortunately, this proposal involves a return to an historical stage of union development which most labor organizations today have outgrown, while the idea of a complete separation between policy-making and policy-execution flies in the face of the trend in both business and government administration and control.

The bargaining process of negotiating labor agreements is examined by Professor Slichter from the standpoint of trends in the attitudes and skills of the parties, and he finds the prospects for the future hopeful and promising. In spite of this conclusion, in his final chapter, "Trade Unions and the Public Interest," it appears that he is unwilling to rely upon collective bargaining as the principle for regulating conditions of employ-

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ment, for, as he phrases it, under collective bargaining the freedom of the parties to fight each other is considered more important than the need of the public for continuous service. He identifies six situations in which he thinks strikes should be declared prima facie for an illegal purpose, three of which are defined in terms of the motive and effect of the strike, while three are defined in terms of industries providing essential public services: strikes (1) compelling employers to violate the law, (2) coercing the government, (3) forcing workers to change their union affiliation, and strikes in (4) hospitals and institutions, (5) railway transportation, (6) industries producing electric light and power.

Justified as Slichter may be in construing the temper of Congress and the public as insisting that something be done about curbing the power of unions, in this reviewer's opinion he would be on firmer ground if he had confined himself to consideration of restrictions consonant with the policy of a government committed to collective bargaining as the primary instrument for settling industrial disputes. Within this line of reasoning, he could have emphasized means of placing responsibility for settling disputes clearly on the parties, rather than replacing and shifting that responsibility to government, which follows from the act of depriving workers of the legal right to strike. He could then logically have recommended removal of the protection of the Wagner Act from workers striking to force other workers to change their affiliation, and perhaps to strikers and union officials compelling employers to violate specific provisions of law. But the "essential industries" approach leads to government determination of the employment bargain, which neither he, labor, nor management appears to want. The problem of strikes against the government also raises questions of a different order, but here Mr. Lewis' chickens are coming home to roost.

AVERY LEISERSON.

University of Chicago.

State-Local Relations. (Chicago: Council of State Governments. 1946. Pp. vii, 228.)

In January, 1945, the Council of State Governments created a committee of state officials and instructed it "to study the broad field of state-local relations and to develop a report with definite recommendations." Herbert R. O'Conor, governor of Maryland, was named chairman and Morton Grodzins was selected as director of research. *State-Local Relations* is the report of that committee. The committee undertook a comprehensive and thorough study of existing relationships, but did not make definite recommendations. Instead, the report carries "conclusions that have widespread applicability" and "alternative suggestions for *improved* practices." This decision not to make specific recommendations

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strengthens the report. Because of the complexity of the problem and the variety of practices (even among different areas in the same state), specific recommendations would be widely regarded as too academic to be of practical value. We may hope that the report in its present form will "stimulate thinking and study" and encourage the coöperation of state and local officials in the solution of their common difficulties."

The report is presented in six parts: "The Growth of Government" (pp. 1–9), "The Administrative Relations of States and Localities" (pp. 11–55), "The Relative Fiscal Strength of States and Localities" (pp. 57–87), "Improving the Fiscal Position of Local Governments" (pp. 89–139), "Legal Relations of States and Localities" (pp. 141–181), and "The Multiplicity of Local Governments" (pp. 184–224). Each part is preceded by a one-page itemized summary, and these summaries are collected and reproduced as a "Summary of Report."

The report is the product of careful research including the examination of a wide variety of official documents and published papers. It is not, however, exhaustive, and it reveals some lack of balance. For example, approximately eighty pages are given to financial relations, but the problem of personnel relationships is given only scant and almost incidental attention. Architectural and engineering services, specifications and purchasing, are not recognized as significant areas of state-local relationships. The report appears to be a "desk" rather than a "field" study. Parts Five and Six present little by way of freshness either in subject-matter or in approach.

The summaries are the most useful aids included to facilitate the use of the report. There is no bibliography. The footnotes provide only partial coverage of sources and show some significant omissions. The index is inadequate; it lists the names of only five of the many authors mentioned in the text and footnotes, and carries references to only about one-third of the states. Items of substantial importance are omitted, while others are carried which appear to be of only casual or incidental importance. The reference purposes which the report might have served make these deficiencies especially regrettable. The graphic presentations are excellent, but too infrequently used.

In spite of these critical comments, the publication is both timely and constructive. The study brings together in a single volume sufficient samplings of existing practices to emphasize the importance of the problem and clearly to indicate present trends. Centralization, consolidation, or state dictation is obviously not the solution. The failure of the committee to make specific recommendations stresses the need for further study and experimentation. But the present report merits careful study.

HAROLD M. DORR.

University of Michigan.

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How to Get into Politics. By Oliver Carlson and Aldrich Blake. (New York: Duell, Sloan and Pearce. 1946. Pp. 210. $2.50.)

It is not easy to lift politics and politicians out of the environmental setting. In this little book the authors have assumed that the art of winning elections is practiced according to simple rules that apply equally in all parts of the United States and at all levels. Although both authors have had much experience with such special election problems as recall elections and initiative legislation campaigns, they make no reference to these problems. Their precepts and observations apparently are drawn from campaigns by "independent" candidates in direct primary states where party organizations are not thoroughly established. There are chapters about budgets for the campaign, proper office settings and campaign headquarters, precinct workers, campaign literature, and proper timing of political moves. However, the easy-flowing homilies of the book are left with a gossamer thread of precept unsupported by illustrations. The few illustrations that can be identified by time and place are put in diffidently and immediately obscured.

Among the more interesting sections of the book are those dealing with the campaign budget and with the work in the precinct. General advice is offered the would-be entrant into politics on how to "discover where the money bags of gold are located." Although the public is penurious with politics, the skillful political manager or public relations man will get money from business: "one of the oldest phenomena of politics is the carefree manner in which otherwise cautious business men give to political campaigns." In planning the expenditures side of their campaign budget, the authors lead the reader through the workings of a district manager's mind as he jettisons various expenditure plans because the funds do not come in as hoped for. When forced to bed rock, he clings to one hundred precinct workers and some campaign literature. The campaign in the precinct, as every manager knows, is vital. The advice about probing the voter's mind, recording the information, evaluating the resulting pattern, and getting out the vote in the precincts is interesting and has a genuine note of realism.

The conviction upon which this book is based is that politics is the lifeblood of American government, and that everyone may be bitten by the desire to "get into the game" at some time. To the would-be professional, a discouraging note is given: there is little take-home pay for the rank and file political organizer and worker.

This book perhaps was drafted at the luncheon table by two acquaintances who had had long experience with their subject in Mid-West and Western states and had decided to write a little book for the beginner. The student of political science will find little that is new. The book is pitched

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at the ABC level. Its adages would be grist to the mill of political discussion groups.

WINSTON W. CROUCH.

University of California (Los Angeles).

Cogwheels of Democracy; A Study of the Precinct Captain. BY SONYA FORTHAL. (New York: The William-Frederick Press. 1946. Pp. 106. $2.00.)

It is not to be supposed that this little book, published only last year, is a belated contribution to the understanding of practical politics. Dr. Forthal actually made her study about twenty years ago, and she has reported on it several times before gatherings of political scientists. She is, therefore, one of the pioneers. As Dr. Gosnell points out in the "Foreward," Dr. Forthal is a courageous woman: "There was no part of the city [Chicago] in the days of Al Capone that was too tough or dangerous for her to investigate." Despite the hazards, Dr. Forthal personally examined the operations of politics on its lowest, fundamental level, and brought back a singularly objective and unprejudiced report. For this we should be grateful, since it is extremely unlikely that local politics will ever again be as corrupt or brutal as in the late twenties and early thirties.

Although the conditions of political life in Chicago have changed, the precinct captain of today is not greatly different from the precinct captain of 1927. The turnover is not high, and many of the members of the present machine were active a generation ago. The modern Chicago politician is, however, not as lawless as his earlier counterpart. He does not feel impelled to beat up and murder his opponent as he did a generation ago. And, after fifteen years of domination by the Kelly machine, the lower units of party organization in Chicago have become relatively stable. In other respects, the author's analysis is still valid.

What Dr. Forthal has to say about the captains does not sound as though it were "new"—for the reason given above. She denies that there is "a typical precinct captain" (p. 45), but this is only a note of caution. The evidence she presents adequately sustains the conclusion that precinct captains are a type of political personality, with three distinct subtypes (captains from rich, middle-class, and poor precincts) and many minor variations. Most, in fact nearly all, of the captains were friendly persons, capable of giving the impression of having a highly personal interest in each and every citizen asking for relief. But they tended also to be suspicious of investigators, as though they realized that they were inadequate to the tasks which constituted their public justification. Privately, nearly all of the captains were cynical about their own and their colleagues' motives. They were "in the game" for the fun of it *and* for

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economic gain. The majority were docile in their attitude toward superiors. Hardly any of the captains had any clear-cut views on politics. They seldom indulged in theoretical speculations. Idealogically, they struggled constantly to conform. The chief appeals used in getting out the vote were the "bread and butter" argument ("help me or I'll lose my job") and the appeals to fear or gratitude.

The most successful captains lived in the districts they represented, and reflected the educational, economic, and social attributes of their constituents. In Dr. Forthal's sample, the most numerous captains on a pro-rata basis, with respect to national origin were (in this order): Italians, Poles, British, old-stock Americans, Russian Jews, Irish, Norwegians, Austrians, Canadians, Czechoslovaks, Lithuanians, and Swedes. A study of the entire corps would probably have revealed a larger number of Germans. Most of the captains interviewed were born in Chicago; and of the fathers of captains who were of foreign birth, eighteen per cent were born in Germany, seventeen per cent in Ireland, and eight per cent in Poland. Seventy per cent were in governmental service—and nearly all the rest were rewarded for their combined social, economic, charitable, mediatory, and electoral duties by levies on the public purse: contracts, graft, tax remissions, etc.

No one has ever published an account of the flow of payments and receipts in a precinct or a ward. It is quite complicated. The average captain must dip into his own pocket for relief, for petty day-to-day expenses, for tickets, for contributions to the party chest, and for fees, bribes, and other payments to public officials who do "favors" for him. In return, he collects some fees himself from constituents he helps, shares in "the take" from corrupt operations in his precinct, and obtains campaign funds from the ward and central headquarters ($25 to $80 a precinct in the 1928 primary). It is not only the public which sustains the net cost of all this activity; in New York the reviewer knows a captain who paid out directly over $1,000 in one year (not counting "entertainment" for constituents) and received in return official favors amounting to less than $100. The average captain actually does not profit from the game of politics. But the entire system is wasteful, especially in cities dominated by political machines.

Dr. Forthal's remedies are those which every honest political scientist approves in principle: (1) break up political machines; (2) place all public employment on a merit basis; (3) establish a new, and flexible, kind of neighborhood relief organization; (4) make judgeships appointive and humanize the law; (5) put election administration on a non-professional, non-partisan basis; and (6) devise new means of financing the political parties. In practice, the average political scientist avoids involvement with these problems. And this is the fundamental reason why the lowest

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and basic level of politics has not advanced very much beyond the condition it was in when Dr. Forthal made her initial observations.

ROY V. PEEL.

Indiana University.

Criminal Justice and Social Reconstruction. By HERMANN MANNHEIM. (New York: Oxford University Press. 1946. Pp. x, 290. $4.00.)

This volume is a part of the International Library of Sociology and Reconstruction series initiated in Great Britain during the war to study various aspects of the existing social order and formulate plans for its reconstruction in the postwar period. Under the general editorship of Karl Mannheim, assisted by an advisory board composed of Harold Butler of Oxford University, A. M. Carr-Saunders of the London School of Economics, Fred Clarke of the University of London, and A. D. Lindsay, Master of Balliol College, a number of volumes on the sociology of education, art, literature, and politics have already appeared. In keeping with the purpose of the series, the present volume attempts to show how the work of social reconstruction might be effected in the field of criminal justice. This raises the question of what we regard as the most important values in a reconstructed world, and whether these values should be protected by the traditional devices of the criminal law or entrusted to agencies of a different character. In examining this question, the author, who is now serving as a lecturer in criminology at the University of London, divides his work into two parts: one dealing with "The Crisis in Values and the Criminal Law"; the other with "Replanning Criminal Justice." In Part I, nine closely packed chapters are devoted to an analysis of the content of existing criminal law and to a reconsideration of its applicability to a changing society. In Part II, three highly suggestive chapters are given over to the administrative problem which will confront us if his recommended changes in the substantive law are adopted.

In the author's view, there is a crisis in values today which makes it imperative to modify large sections of the criminal law. Accordingly, certain activities which are now treated as criminal offenses should cease to be punishable. In this category he places attempted suicide, euthanasia, and with qualifications, sterilization, strikes, and selected forms of abortion and homosexual activities. At the same time, he would bring into his new criminal law certain other types of anti-social behavior, such as the breaking up of the family home, usury, tax avoidance, dangerous monopolistic practice, and some forms of negligence. He would also relax some existing criminal legislation and bring it into line with modern psychological and sociological knowledge, as in the case of murder and theft; or strengthen it, as in the case of fraud, profiteering, and other more refined

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forms of economic offense. Such a wholesale shifting of emphasis from simpler to more complicated types of anti-social behavior will be impractical without an equally determined re-thinking of the functions of the criminal law and its relations to kindred branches of the law, involving less emphasis on the protection of individual rights and interests and more on the rights and interests of the community at large. He believes that this can be achieved better by large-scale preventive action than by punishing individuals after the fact. Such large-scale preventive action would be of an administrative rather than a judicial character, and would employ such devices as the issuing of licenses and permits, fixing of price and interest rates, etc. This redistribution would effect basic changes in the relationship between the criminal courts and administrative agencies and restrict the courts in many fields to the formal side of the question at issue. In similar fashion, impetus would be given to recent movements tending to oust the criminal courts from the penological sphere and replace them by such agencies as "treatment tribunals," "youth welfare councils," "pit tribunals," etc.

In brief, this volume presents a compactly organized survey of recent trends of thought in the field of criminal justice and a twenty-five-point working program for the future. While many of the suggestions advanced will undoubtedly prove highly controversial and may not be realizable at any early date, the volume should be useful and stimulating not only to the practical worker in the field, but to the discriminating general reader as well. As an integral part of a series of volumes on social reconstruction, it has accomplished its purpose very well indeed. A selected reading list and an index of authors and of subjects are appended.

FRANCIS R. AUMANN.

Ohio State University.

Public Investment and Full Employment. BY BENJAMIN HIGGINS. (Montreal: International Labour Office. 1946. Pp. ix, 348. $2.25.)

In planning for full employment, most countries are assigning an important rôle to public investment as an effective agent for combatting cyclical unemployment. This thorough analysis of international experience with public investment by Benjamin Higgins of the I.L.O. staff makes a persuasive case for carefully planned, properly timed public investment. It also dispels effectively some common misconceptions on public investment that are still current as a result of the misapplication of this technique during the thirties. In the interwar period, as this study shows, all nations, with the possible exception of Sweden, did complete violence to now accepted principles of planning and initiating public investment. The incisive analysis of United States experience with PWA, CWA, and WPA is of particular interest and importance in this connection.

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Both specialists and non-specialists will profit from Part I's analysis of the postwar employment problem and the relation of public investment to employment policy. Parts II and III deal concretely with financial and technical problems in the timing of public investment. Part IV analyzes the "lessons of the thirties." Part V contains a highly useful factual account of the postwar public investment plans of Australia, Belgium, Canada, Sweden, Switzerland, the United Kingdom, the United States, and a number of "capital scarcity" countries. For the technician, the study contains two valuable appendices dealing with the estimating of process effects and planning public expenditures other than investment.

While this study's recommendations on future policy may not evoke universal agreement, the practical program suggested is carefully reasoned and the analysis of past mistakes is well-nigh irrefutable. No extravagant claims are made for the magic properties of public investment. The limitations of the technique are explored thoroughly. The searching exposition of barriers to effective planning and timing of investment at local-governmental levels does not prevent Mr. Higgins from concluding that "integration of public investment planning need not mean domination by the central government" (p. 298).

If this otherwise dispassionate survey has a message, it is the "international importance of domestic public investment" and the consequent need for consultation and coöperation among nations in planning their public investment activity. The study is somewhat meager, however, on suggestions as to practical integration of national plans at the international level.

At this writing, it is not clear that the United States has profited by the lessons of the thirties in the public investment field. This I.L.O. study is a valuable contribution. The reviewer is prompted to suggest that it deserves a prominent position in the library of President Truman's Council of Economic Advisers.

HAROLD W. DAVEY.

New York University.

The British Year Book of International Law, 1945. (London: Oxford University Press. 1947. Pp. vi, 341.)

The appearance of this volume, marking the twenty-second year of issue of the periodical under auspices of the Royal Institute of International Affairs, should be of more than passing interest to all serious students of the legal aspects of international relations. Much of the material, aside from summarized decisions of English courts in 1943–44 and from book reviews, relates to public international organizations, while some comprises historical or analytical discussion of substantive international law,

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some has to do with applications of international law during the Second World War, and some falls within the domain of conflict of laws.

Under the first of these divisions would come particularly the 62-page article by C. Wilfred Jenks on "Some Constitutional Problems of International Organizations." The author submits that "international lawyers must now be prepared to recognize as one of the major divisions of their subject the comparative law of the constitutions of international organizations" (p. 11), and examines, on the basis of texts and practice, such questions as the composition of representative organs, voting, suspension of rights and privileges of members, jurisdictional immunities, amendments, and finance. In a separate note, Mr. Jenks discusses the legal personality of international organizations. The *Year Book* also contains a brief note, signed by a single initial, on "The Relationship of International Organizations to Municipal Law and Their Privileges and Immunities." Articles of Agreement of the International Monetary Fund and Articles of Agreement of the International Bank for Reconstruction and Development are analyzed, from the legal point of view, in a note by F. A. Mann. Logically relatable to the subject of international organization, but not restricted thereto, is the article on "International Civil Aviation and the Law" by R. Y. Jennings, who writes critically of the limited progress made in this field.

There is a short but instructive article by J. Walter Jones on "Leibniz as International Lawyer." The historical development of rules is examined in an article on "Territorial Waters: The Cannon-Shot Rule," by Wyndham L. Walker, who presents the thesis that the three-mile limit may have had no common origin with the cannon-shot rule as taught by Bynkershoek on the basis of practice. Less historical and more analytical is an article by Lauterpacht on "*De Facto* Recognition, Withdrawal of Recognition, and Conditional Recognition," one by Schwarzenberger on "The Most-Favoured-Nation Standard in British State Practice," one by J. Mervyn Jones entitled "Who Are British Protected Persons,?" and one by Lipstein on "The Place of the Calvo Clause in International Law."

The practice of Great Britain as a belligerent in the Second World War receives attention in an article by Fitzmaurice on "Some Aspects of Modern Contraband Control and the Law of Prize," in the course of which the author examines the international legality of such techniques as requisitioning, the use of navicerts (particularly under the "compulsory" navicert system), and rationing of neutral countries. The subject of "Open Towns," with special reference to experience in the recent war, is discussed in a note by "R.Y.J.," and there is a note by Norman Bentwich on "Legal Aspects of the Restoration of Ethiopian Sovereignty."

Primarily in the field of conflict of laws is an article by J. H. C. Morris

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on "The Transfer of Chattels in the Conflict of Laws" and a note by Norman Bentwich on "Jurisdiction of English Courts in Divorce and Nullity." Not easily classifiable under any of the divisions suggested above, but dealing effectively with a familiar subject, is an article on "International Law and the Controversy Concerning the Word 'Law'," by Glanville L. Williams, who submits that the dispute as to whether international law is "law" is a mere verbal one and should be brought to an end.

ROBERT R. WILSON.

Duke University.

The Process of International Arbitration. By KENNETH S. CARLSTON. (Columbia University Press. 1946. Pp. 264. $4.50.)

Though the problems of power politics appear to overshadow strictly legal issues these days, it is helpful to remember that international law, after all, possesses methods for the adjustment of international differences, and that these procedures, with a long tradition back of them, are available if and when the international scene becomes more settled. One of the most venerable of these pacific settlement procedures, of course, is that of arbitration; and in this scholarly and well-documented volume Professor Carlston, of the University of Illinois, has offered a valuable analysis of the accumulated rules involved in the arbitral process.

This is a book for the technician in international law. It is not for the layman and does not purport to be such. Professor Carlston is writing for lawyers, for those in foreign offices who handle claims and judicial questions, for persons who may be asked to serve on arbitral bodies, and for experts in the field of pacific settlement in general. The main chapter titles give an indication of the scope of the work and of its rather technical character: "Procedure"; "Minimum Procedural Standards"; "Jurisdiction"; "Doctrine of Essential Error"; "Finality of the Award"; "Rehearing"; "Appeal"; and "Future Progress."

In dealing with each of these subjects, the author indulges in no abstractions. His pages are filled with detailed case studies, and his generalizations are based upon sound and solid practice. Students of international law will find much of interest in his dissection of some of the more familiar cases, such as the Hungarian Optants case, the Orinoco Steamship Company case, the Cayuga Indians case, and the Chamizal arbitration. Professor Carlston agrees that the American Commissioner in the last-named was correct in his criticism of that much discussed award. In addition, many less familiar arbitral and claims commission cases are brought forth for careful scrutiny.

Probably the most controversial feature of the book is Professor Carlston's assumption that arbitration is in essence a judicial process. He

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agrees completely with Judge Moore's thesis in this regard and maintains, both in the preface and in the conclusion, that arbitration is not to be distinguished from judicial settlement. In fact, he includes the work of claims commissions and that of the Permanent Court of International Justice right along with the procedures of agencies specifically designated as arbitral courts or commissions.

This grouping together of forms of pacific settlement which in most orthodox volumes are clearly differentiated is a matter about which international lawyers will doubtless disagree strongly among themselves. This reviewer, for one, is not convinced that arbitration is really a judicial process or that it serves any useful purpose to try to merge the two. Fusion leads to confusion. A difference of opinion on this aspect of the question in no way, however, impairs the value of Professor Carlston's contribution. He has performed a remarkable task in assembling widely scattered data in this veritable guide-book to the ways and means of preparing, conducting, and evaluating an international arbitration. The array of evidence is so impressive and the number of awards cited is so numerous that craftsmen in the field can take new heart in the efficacy of at least this branch of international law.

PAYSON S. WILD, JR.

Harvard University.

Our Vichy Gamble. By WILLIAM L. LANGER. (New York: Alfred A. Knopf. 1947. Pp. ix, 412. $3.75.)

An outstanding diplomatic historian here turns his hand to a readable, much-needed, and sober account of the cause of the hottest foreign policy controversy in recent years—our relations with the tainted Vichy régime in France from 1940 to 1943. In spite of an unobtrusive air of defensiveness, this is not an official apology. For the most part, Mr. Langer lets the facts unfold whatever logic there was in the government's policy. To his experience as chief of the Research and Analysis Branch of the OSS, the author has added a fine combing of sources ordinarily veiled for years after the event, and conversations with many principals. The alacrity with which this material has been made available is a good sign; it is also a tribute to the scars left by critics.

Mr. Langer's conclusion is that the Vichy policy was "sound but unattractive," frankly unsentimental, non-ideological, and opportunistic. Based on political realities and military requirements, this policy was not as simple and clear-cut as it appeared to the uninformed layman; there were uncertainties, difficulties, and conflicting choices. It was a "hand to mouth policy" which was never completely trusted. The number one objective was to protect American interests. In particular, the flow of intelligence had to be secured, the French fleet had to be kept out of

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German hands, and North Africa had to be preserved as a future Allied base. Immediately after the fall of France, relations between Washington and Vichy were not severed, because there was no good reason for so doing. Later, definite advantages could be attributed to this decision. In terms of objectives and results, the policy was largely successful on all counts. Mr. Langer directs special praise to the Murphy-Weygand Economic Accord.

The core of the problem as it developed could be formulated thus: DeGaulle or Vichy? Until 1942, DeGaulle "had little to offer us," and after he gained power and stature we did not transfer our support to him because of personal distrust, underestimation of his strength, and reluctance to disturb intelligence communications. American interests were better served by making the choice we did. Given the same situation, Mr. Langer believes that we would do it the same way again, despite the Lavals and Darlans.

Critics of the Pétain connection were "liberals and radicals" who based their semi-hysterical viewpoint on ideological considerations—an unfortunate basis for accurate thinking about foreign policy. Neither did they perceive that everyone participating in the Vichy government was not a fascist. But Mr. Langer does not really do the opposition justice. And the fact that he was writing about persons still active in high politics undoubtedly restrained his critical judgment. It does not follow, however, that if these minor weaknesses were corrected Mr. Langer's thesis would be fundamentally altered.

By implication at least, this study tends to minimize the relationship between forms of government and diplomacy; "the task of the Department of State is to protect American interests abroad, not to sit in judgment on other governments" (p. 383). Can such a neat line be drawn? Further, does not a country have long-term as well as short-term interests? Is it not a question of priorities rather than American interests versus moral principles and sentiments?

One can chip away at Mr. Langer's case, but he cannot pull down its basic structure. Most people will have to go along with him, although they probably will not be happy about it.

RICHARD C. SNYDER.

Princeton University.

Seizure of Territory; The Stimson Doctrine and Related Principles in Legal Theory and Diplomatic Practice. BY ROBERT LANGER. (Princeton: Princeton University Press. 1947. Pp. viii, 313. $3.50.)

One can hardly escape reflective memories while reading Mr. Langer's record of the failure of pacific nations to use non-recognition effectively as a means of discouraging the aggressive seizure of territory. His history

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covers principally the period between wars when representatives of nations talked as if international law were real and applicable, but acted with lukewarm devotion to its application.

The record is well presented here in summary, based largely on salient quotations from documents. Article 10 of the League Covenant implied an obligation on the part of member nations to refuse recognition to the seizure of territory from members, but was never interpreted with any force until the League revived long enough, in December of 1939, to exclude the Soviet Union for its action in Finland. Previously, no conclusive measures had been taken in the cases of Manchuria, Ethiopia, Austria, Czechoslovakia, Albania, and Eastern Poland. In each case the League was notified, even long after it was evident that no action could be expected. The main verbal support for non-recognition in these years of the League's decline, until the outbreak of the Second War, came from Litvinov of the U.S.S.R., Wellington Koo of China, and Jordan of New Zealand. Their voices were earnest, but unheeded.

Outside the League, Mr. Langer finds that the United States has been consistent in advocacy of the policy of non-recognition since 1932, although it has diluted its practice, as have other nations when they have also advocated the policy, due to the need for maintaining relations for trade and observation within the territory seized by conquest. The most precise and the original statement of the current United States policy was in Secretary Stimson's note to China and Japan in 1932, when he said that the United States would not recognize as *de facto* any situation in Manchuria which might impair the treaty rights of the United States or its citizens. In fact, the United States, alone and as a participant in the Inter-American agreements which have accepted the principle of non-recognition, is the major power which has contributed most to the formulation and application, mild as it may have been, of the doctrine.

Mr. Langer's history of the failure to use non-recognition to discourage aggression is the most interesting and useful part of his book. He makes no attempt, however, to penetrate the political forces which caused the failure. In his conclusion he says only that "the fixation of appeasement developed in the statesmen of the League Members a mental process which caused the sense of a legal duty of non-recognition to wither away." There is no analysis of the whole complex of economic, military, and domestic political factors which produced appeasement. He is concerned with non-recognition almost exclusively as a matter of international law, and his book should be taken for what it is. The background must be filled in from other sources.

The doctrine of non-recognition will continue to be, Mr. Langer concludes, a fundamental principle of the law of the Americas. For the rest of the world, he offers an interesting possibility. After finding that non-

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recognition is not provided in the United Nations Charter, and after expressing doubt because of the veto that the Security Council provisions for joint action against an aggressor will serve as a substitute, he thinks that a time may come when member states, having been thwarted by the voting procedure in their desire to help an invaded country, will fall back upon the device of non-recognition of the seizure of territory and thus offer the aggrieved state some comfort. But here again the concern is with legal steps. We are not told how non-recognition without the use of military force will chase an aggressor nation out of the territory it has seized from a weaker nation; nor are we told if and how the adoption of a legal measure alone, without military action, will really prevent aggression once a nation has decided to grab territory.

JAMES L. MCCAMY.

University of Wisconsin.

The United States Moves Across the Pacific. By KENNETH SCOTT LATOURETTE. (New York: Harper and Brothers. 1946. Pp. ix, 174. $2.00.)

A Short History of the Far East. By KENNETH SCOTT LATOURETTE. (New York: The Macmillan Company. 1946. Pp. 665. $4.50.)

The average American college library contains several hundred books dealing with various phases of life in Japan, China, and India. Some of these books are good, some bad, some indifferent, but nearly all of them have been rendered more or less obsolete by the events which took place during the hectic war years. At the same time, American participation in Far Eastern affairs and responsibility flowing from political and economic developments in that area is greater than ever before. College students and faculty members are keenly aware of this fact, and there is a strong demand for authoritative interpretations of the Far Eastern scene. It is not surprising, therefore, that the past year has seen the appearance of a large number of books dealing with various phases of Eastern Asia. Among the most notable and most important are two which come from the pen of Professor Latourette.

The United States Moves Across the Pacific is a short, general study of the present situation and what this situation may imply for the future. It is easy reading and can be warmly recommended to all persons both in academic and in non-academic circles who are striving to secure a clearer picture of the Far Eastern scene. The first part consists of a brief but excellent historical summary of America's participation in Far Eastern affairs, and stresses the heavy responsibilities which the United States has assumed in Asia, from which there is no escape in the foreseeable future. The second part deals with present conditions in China, Japan, and the other parts of Eastern Asia, including the East Indies. It constitutes a summary, a very fair and unbiased summary, of the political, social, and

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economic factors with which America must reckon before deciding which policy or policies to adopt in dealing with Oriental affairs. The third and final part discusses the various policies which the United States might adopt in the immediate future with respect to these various Oriental countries and makes some recommendations with regard to these policies. It is obvious that not all readers will agree with all of the recommendations made, but at least Professor Latourette's ideas are sane, well balanced, and at the same time thought-provoking.

The other book, *A Short History of the Far East*, is obviously intended primarily as a text-book for class-room use, or for assigned outside reading, and hence it will be of less interest to the general reader—which is a pity since the book contains many facts and conclusions which should be of interest and value even to members of ladies' literary clubs. Apart from a brief outline of the geographic background, about half of the book deals with the history of India, China, and Japan down to the coming of the Europeans in the eighteenth and nineteenth centuries, while the other half deals with modern and contemporary history and ends with a survey of the political situation in 1946. In attempting to paint such a broad canvas, it is obvious that Professor Latourette has had to encounter difficulties. In trying, for example, to outline the whole of Chinese history from the earliest times to 1800 A.D. in a little over a hundred pages, the author has been hard put to decide which facts to include and which to leave out. Some critics may carp that some important facts have been left out and other less important ones put in, but on the whole the selection of data has been a wise one. Certainly Professor Latourette has tried, and successfully, to be scrupulously fair to all sides, and no inclusion or exclusion of facts can be laid to bias. In writing this book, the author has leaned chiefly upon secondary rather than upon primary sources, but as a general work covering this important phase of world history the volume can be warmly recommended.

WILLIAM M. MCGOVERN.

Northwestern University.

China's Destiny. BY CHIANG KAI-SHEK. Authorized translation by Wang Chung-hui. (New York: The Macmillan Company. 1947. Pp. xi, 260. $2.75.)

China's Destiny received much publicity before it was translated because of the position of the author and because of what he was reported to have said at the time when the first edition was published in Chinese. It seemed strange that the head of a state engaged in war should publish what was reported to be a bitter criticism of his allies. Then there developed some controversy over the question of translation. All of this made people curious about the book.

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This official translation takes into account the controversy by printing an appendix containing "Notes on the Original Edition of *China's Destiny*," showing textually the changes made in the revised edition, which is the one translated. These notes indicate that the revised edition was made more accurate factually, and that there was some toning-down of the first edition. Otherwise it appears that the revision, for purposes of translation, retains the original version substantially unchanged.

The major emphasis in the book is on the "unequal treaties" and their effect on China's development. Chiang Kai-shek presents the conventional Chinese thesis that China's modern plight has been largely a result of Western imperialism and of Manchu misrule and subserviency, which made possible the imposition and maintenance of the treaties. The final revision of the treaties—which *China's Destiny*, given the time of its original publication, may have been designed to celebrate and commemorate—has the effect of placing the responsibility on China and the Chinese for the future development of the country. " . . . in the past, China's destiny depended on whether the unequal treaties could be abrogated or not, for that was precisely the issue which was to decide her future. Now that the unequal treaties have been abrogated, the question to be decided is whether China can be unified politically and whether her national power can be consolidated or not. In the past, China's destiny depended upon diplomacy: it was in the hands of foreign imperialistic powers. In the future, China's destiny will be decided by herself; it will be in the hands of her own people" (p. 215).

In his consideration of problems of revolution and reconstruction (the treaties having been dealt with successfully), Chiang identifies his own views with those of Dr. Sun Yat-sen, as expressed particularly in the San Min Chu I. It is this part of the book which will be of particular interest to political scientists. Here he discusses the "five important aspects of reconstruction, namely, psychological, moral, social, political, and economic" (p. 152 ff). The instrument of reconstruction, Chiang believes, must be the Kuomintang. " . . . Sun Yat-sen said: 'Every Chinese citizen has not only the right but also the duty to be a member of the Party.' The same statement applies to all the youth of the nation with respect to the San Min Chu I Youth Corps. The Kuomintang and the San Min Chu I Youth Corps together constitute the directing center for the execution of this task [of national reconstruction]" (p. 214). Again, "The independence of our nation hinges upon the success of the Kuomintang Revolution. Without the Kuomintang, there would be no China. In a word, China's destiny is entrusted to the Kuomintang" (p. 220). Given this view, and given the internal situation in China both at the time of writing (1943) and now, the problem of reconciliation of Kuomintang and Communists would seem to be unsolvable. On this, Chiang's answer is: "So long as the

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different ideologies and organizations in China do not take the form of regional domination by force or open antagonism to the Revolution, so long as they do not obstruct the war of resistance by armed force, so long as they work in the interests of the nation, the Revolution, and national reconstruction, I have not only no intention of checking them but on the contrary wish them progress and success" (p. 221). In other words, read with Chiang's identification of the Revolution with the Kuomintang, the Communists and other dissidents will be tolerated if they give up their armed forces and work within the Kuomintang to accomplish revolutionary purposes as defined by it. That is their destiny if China's destiny, as prescribed by Chiang Kai-shek, is to be realized.

HAROLD M. VINACKE.

University of Cincinnati.

Russia in Perspective. By GEORGE SOLOVEYTCHIK. (New York: W. W. Norton and Company. 1947. Pp. 244. $3.00.)

The highest tribute which one can pay this book is that it is journalism of a very superior order. The author cuts no new scholarly furrows. Most of the material which he presents will be familiar to those versed in Russian history. Yet as a *vade mecum* for those who come fresh to the Russian problem, the book has a useful rôle to play. It is soundly grounded on the premise that the Soviet régime is the child of Russia's prerevolutionary past, and that it is therefore important to study that régime against the perspective of the historical factors which have conditioned its emergence and development. Within the limits of the space available, the author has provided an interpretative vignette of Russian history from Rurik to the Bolsheviks that is lively, incisive, and suggestive.

Mr. Soloveytchik, the foreword informs us, was born and educated in Russia. Compelled to leave by the Bolshevik Revolution, he became a subject of Great Britain, where he has had a distinguished career as a publicist. As an émigré from his native land, he combines a warm love for the Russian people with an equally warm distaste for their Bolshevik masters. As a result, he finds himself in the rather curious predicament of being a protagonist for the recognition of Russia's legitimate national interests at the same time that he advocates a firm policy of resistance to Soviet imperial pretensions. While these two positions are perhaps reconcilable, Mr. Soloveytchik's own reconciliation is left vague and undefined.

The primary value of the volume is in its emphasis on the continuity of Russian history. While this approach tends to play down and even neglect the extent to which Russian Communism received its ideological nourishment from the West, it furnishes a healthy corrective to those shallow views of Soviet politics which ignore the specifically Russian influences that have shaped the character of Soviet institutions. Soloveytchik gives

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us a far more sympathetic account of nineteenth century Tsardom than that to which we are accustomed. While his emphasis on industrial progress, social and legal reforms, and intellectual activity is a welcome reminder that the record was not all black, his tendency to dance lightly over darker passages raises some troublesome questions about his own sense of perspective. As one would expect, Mr. Soloveytchik puts particular emphasis on those aspects of Soviet development which have borrowed from the past. He is particularly concerned to stress the recent resurgence of Russian nationalism and to identify it with its Czarist paternity. "Being more nationally conscious than ever," he tells us, "Soviet Russia is much more concerned with her own affairs and interests than with abstract revolutionary doctrine. . . . Today, after twenty-eight years, the storm has nearly subsided and the majestic stream of Russian history is resuming its normal river bed again." While persuasive evidence can be adduced to support this proposition, recent events suggest the more cautious course of treating his thesis as a tentative hypothesis rather than as a verified conclusion.

MERLE FAINSOD.

Harvard University.

Blueprint for World Conquest; The Official Communist Plan. With an Introduction by William Henry Chamberlin. (Washington-Chicago: Human Events. 1946. Pp. 264. $3.50.)

This book will disappoint many who will buy it because of its promising title. It does not contain a description of present-day Soviet policies. Rather, it reprints three documents of the Third International published as early as 1921 and 1928; and W. H. Chamberlin introduces them with some remarks on the aggressive policies of the U.S.S.R. in our time. Therefore the volume does not fulfill its purpose. It does not give a survey of the Communist plans for world conquest. The three Comintern documents are given without any commentary and without explanatory notes. The specialist will read them in the original editions, and for the non-specialist many passages will be unintelligible.

It is a pity that the volume does not cover the whole development of Soviet foreign policies by presenting documents to illustrate its various trends. Even the development of the Comintern is not covered. Only after 1928 did it adopt the so-called People's Front tactics, which tried to use as allies the moderate Socialist parties, previously most bitterly attacked and denounced as Social Fascists and betrayers of the world proletariat. Chamberlin quotes from Lenin and Stalin, but the quotations ought to have been amplified in order to make the reader aware of the permanent and changing features of Soviet policies.

Despite M. Laserson's useful collection of documents on Soviet foreign

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policies (*International Conciliation*, 1943), the general American reader does not have at his disposal a documentary survey of U.S.S.R. relations with the capitalist world, and the volume under review is surely not able to fill the gap. It may even serve as ammunition for those who (unjustly) claim that any publication critical of the U.S.S.R. must be based upon unscientific, biased propaganda. An anti-Communistic attitude may be praiseworthy, but cannot replace completeness and research.

WALDEMAR GURIAN.

University of Notre Dame.

The Struggle for the World. BY JAMES BURNHAM. (New York: The John Day Company, Inc. 1947. Pp. 248. $3.00.)

This book, the author tells us, is concerned with realities, not with mere phrases. In the words of Professor Burnham: "The abstract, empty, sentimental rhetoric of democratic idealism prohibits the understanding of political events." Proceeding with a factual analysis, the author points out that we live in a world revolution, embracing the whole period since the Russian Revolution of 1905. The phrase "One World" has almost no bearing at all. Common humanity has never prevented the peoples of this planet from always being divided, from always fighting. Nothing we can do will guarantee permanent peace. Power politics is the only kind of politics in existence. The realities of the struggle for power are overlaid with a crust of pseudo-moral platitudes. In view of these facts, the author contends that the United States should face the facts and the responsibility of power. A non-Communist world federation is the only rational objective for the United States foreign policy—the only way to meet the ultimate aim of the Communist International and world Communism. Under the leadership of the United States, a "World Empire," or, "a democratic world order," should be built on the basis of the already existing "empire" in the Pacific and Atlantic Oceans, of continued coöperation within the Western Hemisphere, and of "Union Now" with Great Britain and her dominions, as well as by creating the Western *Bloc*. Finally, the Russian advance in the Near East must be stopped by the Moslem *Bloc*. This ambitious program cannot be accomplished by a policy of vacillation, not by a defensive but only by an offensive policy.

This way of thinking is indeed a revolutionary departure from the Platonic doctrine of ideas in politics which has characterized Western politics. But it is only a first step back to Protagoras. In his appraisal of the various political groups seeking power in the twentieth century, Mr. Burnham uses time-honored but nevertheless confusing terms such as "reactionary," "capitalist," "democrat," "socialist," "Marxist," "Communist," "totalitarian." A consistent realist who studies group life should

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first try to visualize the men concerned and then probe their ideological advertisements and the calumnies of their opponents. He should rely upon more specialized terms, as for instance the following socio-historical groups: (1) the "wealth and wisdom" group, to use a Jeffersonian term (in Germany called *Besitz und Bildung*), the collapse of which, beginning at the time of the Russian revolution of 1905, was responsible for the World Revolution; (2) the petite bourgeoisie, a group which, after the doom of the older aristocracy following World War I, best described as the "Robespierre group," anticlerical but pro-property with aspirations of social equality and full security, was defeated in France in 1940, in Italy and Germany in 1945; (3) the old traditional labor party, which, with skilled labor as its nucleus, assumed power in Germany and temporarily in England, France, and elsewhere, advancing a program of sharing the wealth, but failing because of its doctrinaire and diffident attitude; and finally, (4) a second, younger labor group, the new labor party, the victorious heir to power in Europe, made up of propertyless, semi-skilled, and unskilled mass-production labor, accustomed to obedience as Russian half-serfs, as workers on the "running belt," and as a result of distressing conditions.

The "wealth and wisdom" group, by its suicide, destroyed the leadership of the Western civilization in the world. The ascendancy of the new labor group can be overcome only by its internal decay or by uniting the other groups, namely, traditional labor, the Robespierre group, and the divided remnants of the wealth and wisdom group in common resistance.

In addition to making the terminology more realistic, Mr. Burnham might also have been more realistic as to the facts. His strategic plan for building a democratic world order is based on retention of a monopoly of atomic weapons by the United States, and, in an emergency, on "striking an immediate paralyzing blow at the Caucasian oil fields, Moscow, and a dozen or more of the chief Soviet and Soviet-controlled cities and industrial concentrations." Is this realistic? The decisive fact in the last war, which, however, Mr. Burnham does not mention, was the impossibility on the part of the Western Powers of bringing more than ninety divisions to the European theater, where Russia already had about five hundred. This power relation has certainly not improved for the West. In fact, it has deteriorated. Western naval and air supremacy cannot make good this deficiency on the European continent. Planes can destroy, but cannot conquer. On the other hand, neither can Russia conquer the Americas. Eagle and Bear will confront each other for a long time to come. Yet the vertical or social battle within all the countries of this planet will continue.

HUGO FERDINAND SIMON.

Northwestern University.

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The Coming Crisis. By Fritz Sternberg. (New York: The John Day Company. 1947. Pp. 280. $3.50.)

It is apparently the unhappy destiny of modern industrial man to live either in a period of acute crisis marked by war or depression or in a period of uneasy anticipation of impending crisis. *The Coming Crisis* will be valuable to those genuinely interested in the economic future of the United States. It should be read by both liberals and conservatives, because it is a penetrating analysis of conditions in 1947—a period, by almost universal agreement, of uneasy anticipation.

Part I, "The Crisis and the Two World Wars," is slow-moving, overburdened with statistics, and weakened by repetition. Moreover, the theme is not novel. To Mr. Sternberg, the depression of 1929 was unique in that the capitalist system indicated no ability to recover from it and to continue the expanded level of production which characterized the capitalist system of the nineteenth century. Domestic markets could not be expanded sufficiently to restore production to pre-depression levels. The unholy combination of imperialism and feudalism had so limited the development of industrialization in colonial areas that capitalism could no longer increase production by exploiting dependent areas. The approach is not new, but the conclusions are clear. Capitalism after 1929 was, according to Mr. Sternberg, in sorry straits.

In Part II, "The Challenge of the Next Crisis," things really begin to move, and Mr. Sternberg offers something of a solution. It now appears that we are facing the return of a depression which it took a war to get us out of in 1939. We must prepare to meet this depression at a time when World War II has upset many traditional social and economic relationships. All this at a time when the greatest—one might almost say the only—capitalistic country, the United States, is moving to the right and the rest of the world is moving to the left. American capitalism is now running with a wide-open throttle; but, according to Mr. Sternberg, it faces a very uncertain future. Once present demand has been satisfied, will capitalism operate at a level approaching full production? No, says Mr. Sternberg. The crisis of 1929 demonstrated the "inability of American capitalism to expand further to any great extent within its own frontiers." Today, the productive capacity of the United States far exceeds that of 1929. To expand its frontiers, "the total sum of real wages must increase by between thirty and forty per cent as compared with prewar levels." But no one believes that any such increase in wages is possible. Yet failure to act "inevitably means a crisis."

This reader believes that Mr. Sternberg may be correct in his contention that we shall be called upon to cope with another depression, but he cannot agree that "the problem would be simple enough to solve in a socialistic society based on economic planning. . . . " Simple, isn't it? Yet

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there are some fundamental questions which Mr. Sternberg avoids. Is democracy compatible with planning on such a broad scale? Are we capable of such planning? Mr. Sternberg, of course, realizes that any such solution is impossible in the United States today and contents himself with the statement that "the state must accept formally the responsibility for maintaining full employment." Not at all a novel suggestion; but one can find many who would challenge it.

The reviewer has always maintained that American capitalism possesses more flexibility and recuperative power than is usually credited to it by some "liberals." But any observer of the contemporary scene must admit that many of the most extreme supporters of capitalism, by their very excesses, do encourage the inevitability of the coming crisis and, incidentally, increase the accuracy of Mr. Sternberg's prophecies. Capitalism can avoid another depression, but too many of its leaders lack real vision. As Mr. Sternberg implies throughout this discussion of the future of capitalism, the proponents are more likely to destroy it than are the opponents. Truly, the study of economics is the "gloomy science."

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BRIEFER NOTICES

AMERICAN GOVERNMENT AND POLITICS

In his *History of the Labor Movement in the United States from Colonial Times to the Founding of the American Federation of Labor* (International Publishers, 1947, pp. 576, $4.50), Philip S. Foner proposes to refurbish and reinterpret the story of the workers' struggle to secure political and economic freedom in America. After acknowledging the value of the pioneering work of John R. Commons and the "Wisconsin School," the author denies the validity of their institutional or pragmatic theory (which he calls "an apologia for Gomperism") and dedicates himself to the task of presenting a "new interpretation of the history of the labor movement in the United States. . . . " His selection of materials and his interpretations thereof clearly indicate, however, that he too has a definite bench-mark—the class struggle. He denies the assumptions of his precursors that the American labor movement has been and should continue to be merely a matter of job consciousness and sets forth the documented claim that American workers have long been politically conscious and must continue to be so as leaders in the "struggle for socialism." In developing his theme, Dr. Foner has utilized an impressive array of source materials; with its generous footnotes and copious quotations, the book reads like a doctoral dissertation. We are first told of the appalling lot of colonial workers, especially of indentured servants who "probably [comprised] half the immigrants to Colonial America," and then are in-

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formed of the constructive part played by labor in the American Revolution and in the subsequent Jeffersonian and Jacksonian political upheavals. The account of labor support of the new Republican party makes interesting reading, particularly where we are reminded by a quotation from the *New York Herald* (1860) that, once the Republicans were victorious, the workers "would soon turn their attention to the goods and chattels of their wealthier neighbors, having been long taught by the leading Republican journals the doctrine of the communists that "'all property is robbery'." The last half of the book is devoted to a detailed account of the painful efforts put forth to establish trade unions as really effective economic and political instruments for improving the workers' lot. The story comes to a close with the Pittsburgh convention of 1881, at which time the American Federation of Labor was founded. Another volume is in preparation which will bring the record up to date. There is a tendency to pass lightly over the evidence of labor's traditional capitalistic-mindedness and to minimize the support received by the workers from across the tracks. Moreover, the formidable task of compressing so much material into a single volume has encouraged the author frequently to base broad generalizations upon unsupported assumptions or single incidents. This tends to keep the reader on guard. But Dr. Foner presents a challenging and useful book which cannot be ignored by students of the American scene in general or of the labor movement in particular.—WALLACE BREWSTER.

The period from 1933 to 1941 spanned the time from the christening of the Good Neighbor policy to the entrance of the United States into World War II, a development which resulted in the greatest test to which the Buen Vecino had yet been subjected below the border. Mexico, our nearest Southern neighbor, was in many ways the touchstone of the interactions with the Latin American states. An intimate view of United States-Mexican relations during those years, then, would logically be of great significance in an assessment of the early years of the Good Neighbor policy. Such a view is afforded in Josephus Daniels' *Shirt-Sleeve Diplomat* (University of North Carolina Press, 1947, pp. xix, 547, $5.00), the fifth volume of his autobiography. Ambassador Daniels is essentially a reporter, and his news coverage of his own tenure as chief of mission in Mexico for almost a decade is broad. He deals with the awkwardness involved in his appointment (to many Mexicans his name suggested only the unfortunate Navy expedition against Vera Cruz in 1914), with the successive presidents and foreign ministers with whom he had close contact, and with such topical problems as claims settlements, education and religion, the Six-Year Plan, the oil controversy, and others. Much of the latter part of the volume is anecdotal and gives a kaleidoscopic picture of

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all the variegated contacts an ambassador inevitably has. Despite "the Vera Cruz stigma" on his earlier record and his lack of comprehension of Latin America (he confesses surprise at learning that the Monroe Doctrine was viewed critically in Mexico), Daniels' innate friendliness and his determination to become a personification of the Good Neighbor made him decidedly *persona grata* within a relatively short time. The most disappointing feature of the volume is its failure to include much of significance with regard to the broad and deep problems of Mexico. The politics of that country is a fascinating complex, but the ambassador's view of it, or at least his report of it, is unfortunately superficial. Long and frequent quotations from letters to his sons and others, diaries, dispatches, and speeches give an intimate and even chatty view of the passing scene, but they do not plow deeply. The book is handsomely illustrated and well printed. It is a useful volume to add to the Mexican shelf, but the student of that country will need others before he can feel assured of any adequate comprehension of Mexico and its problems.—Russell H. Fitzgibbon.

In his *The Territories and the United States, 1861–1890* (University of Pennsylvania Press, 1947, pp. 163, $2.50), Earl S. Pomeroy deals with the question of colonial administration as applied to our contiguous continental territories. The emphasis is on the period 1861–90, although some references are made to the periods before and after that time. The author shows how many agencies and officials in our federal government had some control and authority over territorial government and how such control was thus far from being centralized and unified. After 1873, the Department of Interior took over the territorial duties which the Department of State previously performed—the former Department being already in charge of Indian affairs, a very important activity in the territories during the period under consideration. One of the great problems in territorial government was that of securing qualified officials for territorial positions. One difficulty was that of low salaries, and not infrequently a territorial official supplemented his income by some enterprises such as engaging in livestock raising, or even writing a book as did Lew Wallace in Santa Fé. Many territorial officials, however, were willing to overlook the low salaries, in high hope of presently being sent to Washington as delegate or as congressman. This work is well documented and contains an extensive bibliography, largely of primary materials. The style is labored, however, and the choice of words does not always make for clarity. A slip, not significant, was noted on page 66: Frank Hall, secretary of Colorado Territory, was not a son-in-law of Schuyler Colfax. The reviewer wishes that the author had given attention to the claim, sometimes made, that there was a lack of coördination between the War Department, which fought Indians, and the Interior Department, which

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Guides to the official publications of the other American republics. No. 4: Chile. By Otto Neuburger. Washington: Govt. Ptg. Off., 1947. 25¢. (Latin American series no. 17.) Paraguay. By James B. Childs. Washington: Govt. Ptg. Off., 1947. (Latin American series no. 16.)

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Temporary committee on employee loyalty. Report. Washington, 1947. 39 p. (mim.)

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2774. Making the peace treaties, 1941–1947. A history of the making of the peace beginning with the Atlantic charter, the Yalta and Potsdam conferences, and culminating in the drafting of peace treaties with Italy, Bulgaria, Hungary, Rumania, and Finland. 150 p. 50¢.

2775. The international control of atomic energy. Scientific information transmitted to the United Nations Atomic energy commission, Dec. 15, 1946. Volume VII . . . 30 p. 15¢.

2782. First report of the air coördinating committee, 1946. 25 p. 10c.

2784. Draft trusteeship agreement for the Japanese mandated islands . . . 20 p. 10¢.

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INDIANA

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———. State regulation of alcoholic beverages; constitutional provisions and state summaries. Topeka, 1947. 17 p. (mim.) (Publication no. 148.)

University of Kansas, Lawrence. Bureau of government research. Governmental agencies of the state of Kansas, 1861–1946, by Bessie E. Wilder. Topeka, 1946. 128 p. (Governmental research series no. 4.)

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